

## STATUTORY FORUM

Report  
CG-FORUM(2021)01-03final  
12 February 2021

*Original: English*

# Monitoring of the European Charter of Local Self-Government in Hungary

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 to Hungary since the country ratified the European Charter of Local Self-Government in 1994.

The report notes with satisfaction that the capital city has a special status and that local authorities can associate themselves to define their interests. In addition, national minorities may, in order to safeguard and promote their cultural identity, establish self-government local authorities. National minorities can thus represent their cultural interests at local and national level.

Nevertheless, the report notes a generally negative situation in terms of local and regional self-government, due to a general failure to comply with the Charter. The rapporteurs express their concerns about a clear trend towards recentralisation, a lack of effective consultation and significant interference by the State in municipal functions. Moreover, the report highlights certain shortcomings in the situation of local self-government in the country, such as a lack of financial resources available to local authorities and their inability to recruit high quality staff.

Consequently, national authorities are called upon to act in such a way as to reverse the centralisation trend, ensure a fair and effective consultation process in line with Article 4.6 of the Charter, while limiting State interference. The rapporteurs also recommend that the authorities allocate sufficient financial resources to local authorities while allowing them to set local taxes and determine their rate.

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 451 (2021) <sup>2</sup>**

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

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

*b.* Article 1, paragraph 2, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government”;

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

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

*e.* 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;

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

*g.* Congress Recommendation 341 (2013) on local and regional democracy in Hungary;

*h.* the explanatory memorandum on local and regional democracy in Hungary.

2. The Congress points out that:

*a.* Hungary joined the Council of Europe on 6 November 1990, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 6 April 1992 and ratified it in full on 21 March 1994, with entry into force on 1 July 1994;

*b.* The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in Hungary. It instructed Mr Marc COOLS, Belgium (L, ILDG) and Mr Jean-Pierre LIOUVILLE, France (R, SOC), with the task of preparing and submitting to the Congress a report on local and regional democracy in Hungary. The delegation was assisted by Prof. Tania GROPPi, Vice-President of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

*c.* The monitoring visit took place from 19 to 21 of March 2019. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the report;

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

3. The Congress notes with satisfaction that in Hungary:

*a.* the capital city has a special status;

*b.* local authorities enjoy freedom of association to defend their interests;

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2. Debated and adopted by the Statutory Forum on 12 February 2021 (see document [CG-FORUM\(2021\)01-03](#), explanatory memorandum), co-rapporteurs: Marc COOLS, Belgium (L, ILDG) and Jean-Pierre LIOUVILLE, France (R, SOC/G/PD).

c. national minorities can establish self-governing local authorities to safeguard and promote their cultural identity and to represent their cultural interests at local and national level.

4. The Congress notes, however, that most of the shortcomings raised in its previous Recommendation 341 (2013) have not been addressed and expresses its concerns in particular on the following issues:

a. the scope of own and delegated competences of local government is very limited (Articles 3.1, 4.2) most of them being reassigned to State deconcentrated administration (Article 4.5) in violation of the subsidiarity principle of division of competences (Article 4.3);

b. the interferences by the State within the local functions undermine the assignment to local authorities of full and exclusive powers (Article 4.4);

c. a genuine regional level of self-government as such does not exist in Hungary since counties have almost no significant competences and do not enjoy any financial autonomy;

d. there is no real and appropriate consultation mechanism in place in practice on all matters that concern local authorities, notably on redistribution and allocation of financial resources (Articles 4.6, 9.6);

e. local authorities cannot recruit high quality staff, and the organisational autonomy of small local self-government units to determine their internal structures is limited (Articles 6.1, 6.2);

f. the supervision of local authorities, carried out by government representatives, cannot be considered proportional to the relevance of the interests that it is intended to protect (Article 8.3);

g. in spite of remarkable economic growth, local authorities' financial resources remain insufficient, and in some cases a "solidarity contribution" has a disproportionately negative impact on local finances (Article 9.1,9.2);

h. local authorities lack sufficient financial resources from local taxes and charges of which they have the possibility to determine the rate (Article 9.3, 9.4);

i. the equalisation mechanism is rather obscure and limited in its impact on the protection of financially weaker local authorities (Article 9.5);

j. grants to local authorities are mostly earmarked for financing specific projects and the criteria of assignment are not objective (Article 9.7);

k. local authorities' level of trust in courts for the legal protection of their autonomy is low, thus restricting genuine enjoyment by local authorities of the right to recourse to a judicial remedy (Article 11).

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

a. reverse the centralisation trend, and in particular stop the allocation of local competences to the State administration and recognise to the local authorities a substantial share of public affairs under their own responsibility thus ensuring that the subsidiarity principle is applied in practice;

b. limit the interferences by State authorities in municipal functions;

c. strengthen the position of counties in terms of their competences and financial resources;

d. introduce a fair and effective consultation process in an appropriate way and in due time with local authorities as set out in Article 4.6 of the Charter on all matters that concern them directly;

e. ensure local authorities' ability to recruit high quality staff by providing necessary resources and increase the organisational autonomy of small local self-government units;

f. make sure that the supervision over local authorities is proportional to the importance of the interests that it is intended to protect;

*g.* allocate sufficient financial resources to local authorities, thereby respecting the principle that the resources should match the functions;

*h.* enable local authorities to establish local taxes and to determine their rate to strengthen local authorities' fiscal capacity;

*i.* revise the equalisation system to ensure its fairness and transparency;

*j.* establish a fair and transparent mechanism for allocating grants to local authorities;

*k.* follow the recommendations of the Venice Commission, contained in its opinions on the judiciary in Hungary, to guarantee to local authorities the right of recourse to an effective remedy and to restore their trust in the national judicial system.

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 local and regional democracy in Hungary and the accompanying explanatory memorandum in their activities relating to this member State.

**EXPLANATORY MEMORANDUM****Table of contents**

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

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution (2015) 9 of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (hereinafter referred to as "the Congress") regularly prepares reports on the State of local and regional democracy in all Council of Europe member States.

2. Hungary is one of the parties to the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter"). Concretely, Hungary joined the Council of Europe on 6 November 1990, signed the Charter on 6 April 1992 and ratified it without reservations on 21 March 1994, with entry into force on 1 July 1994.

3. Hungary signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority on 16 November 2009 and ratified it on 7 June 2010. It ratified the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities on 21 March 1994, the European Charter for Regional or Minority Languages on 26 April 1995 and the Framework Convention for the Protection of National Minorities on 25 September 1995.

4. The Chair of the Monitoring Committee of the Congress appointed Mr Marc COOLS, Belgium (L, ILDG) and Mr Jean-Pierre LIOUVILLE, France (R, SOC), as rapporteurs, and instructed them to prepare and submit to the Congress such a report. An official monitoring visit in Hungary was carried out by the aforementioned rapporteurs. The delegation was accompanied by a representative of the Congress secretariat and was assisted by Prof. Tania GROPPPI (expert). The rapporteurs wish to express their thanks to the expert for her assistance in the preparation of this report. This group of persons will be hereinafter referred to as "the delegation".

5. The monitoring visit took place from 19 to 21 March 2019. During the visit, the Congress delegation met representatives of local authorities, representatives of the government and other institutions. The detailed program of the visit is appended to the present report.

6. According to the rule 84 of Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent, on 7 June 2019, to all interlocutors met during the visit for comments and possible adjustments or corrections. The present report is based on the comments received which have been considered by the co-rapporteurs before submission for approval to the Monitoring Committee.

7. The delegation would like to thank the Permanent Representation of Hungary to the Council of Europe as well as all the interlocutors for the information they provided to the delegation during the visit.

## **2. ELEMENTS OF HISTORICAL AND POLITICAL BACKGROUND**

### *2.1 Historical background*

8. Hungary is a unitary Republic, with two tiers of subnational self-government authorities: according to Article F of the 2011 Constitution (which is named 'Fundamental Law', *Magyarország Alaptörvénye* in Hungarian), entered into force on 1 January 2012, "(1) The capital of Hungary shall be Budapest. (2) The territory of Hungary shall consist of the capital, counties, towns and villages. The capital and towns may be divided into districts".

9. Hungary played an important role in accelerating the collapse of communism across eastern Europe when it opened its border with Austria in 1989, allowing tens of thousands of East Germans as well as other citizens from Warsaw Pact countries to escape to the West. It held its first multiparty elections in 1990.

10. Hungary became the 24th member State of the Council of Europe on 6 November 1990, committing itself to respect the obligations incumbent upon every member State under Article 3 of the Statute of the Council of Europe (ETS No. 1), regarding pluralist democracy, the rule of law and human rights. It was the first former communist country to ratify the European Convention on Human Rights and the European Charter of Local Self-Government, in 1992. Hungary joined the European Union on 1 May 2004. It is member of the Schengen

area since 21 December 2007. European Union funds amount at 1.9-4.4% of the Hungarian GDP and account for over half of public investment.<sup>3</sup>

11. The process of decentralisation took place in the 1990. When the communist regime collapsed, Hungary opted for an administrative and political organisation that left an important role to local government, seen as an essential outlet for democracy.<sup>4</sup> A sizeable proportion of the powers exercised by the State at that time were entrusted to local authorities and especially to the municipalities. According to the previous regulation, municipalities, in specific terms, were given responsibility for primary teaching, water supply and wastewater services, road maintenance, local public transport, local development, environmental protection, land use, fire protection and protection of minority rights, which are all competences that are vital to citizens' everyday lives.<sup>5</sup>

12. Since 2010, Hungary experienced a strong process of recentralisation,<sup>6</sup> which has been pointed out by the 2013 Congress report, according to which "The high level of autonomy for local authorities written into the previous Hungarian Constitution has been compromised by the new Fundamental Law and Cardinal Act CLXXXIX on Local Self-Government of 21 December 2011 (*Mötv*) (hereinafter "Cardinal Act on Local Self-Government").<sup>7</sup> The fragmented structure of municipalities and the weakness of the county assemblies resulted in low quality of performance and financial problems. The latter led to crucial financial crisis accelerated by the global economic and financial crisis started in 2008. The new government, issue from 2010 parliamentary elections, had to face the problem and to find a solution. Possessing two-third majority in the National Assembly it was able to do essential changes even without compromise with the parliamentary opposition.<sup>8</sup>

13. The new legal framework opened the doors to a State takeover of local competences by ordinary laws, which happened in several steps in the following years.<sup>9</sup> By January 2013, according to commentators, "the average urban government has lost one-third of its public servants and the infrastructure they used became central government property"<sup>10</sup>. A similar evaluation was reached in 2015 by the research that led to the establishment of a multi-dimensional "local autonomy index", developed by the European Commission.<sup>11</sup>

14. As a result, in 2016 the self-government authorities managed only the 12.9% of the total public expenditures, which is equivalent to 6% of GDP.<sup>12</sup> In comparison, across the OECD, subnational government expenditure accounts for 40% of total public expenditure and for 16% of GDP. In Hungary, 27.3% of total public investment was carried out by subnational governments, compared to an OECD average of 56.9%.<sup>13</sup>

3. European Parliament, Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL) P8\_TA(2018)0340 [http://www.europarl.europa.eu/doceo/document/A-8-2018-0250\\_EN.pdf](http://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.pdf)

4. After the full revision of Act No. XX of 1949 on the Constitution of the Republic of Hungary, local authorities were granted the right to independently regulate and manage local public affairs within a legal framework: Art. 44/A (1) a) of Act No. XX of 1949 on the Constitution of the Republic of Hungary. In effect until 1 January 2012.

5. As it was stated in the 2013 Report: CG(25)7FINAL 31 October 2013, Local and regional democracy in Hungary, para. 40.

6. We use the term 'recentralisation' to express a process of transfer of competences from local self-government authorities to State administration, including State deconcentrated administration.

7. See CG(25)7FINAL 31 October 2013, Local and regional democracy in Hungary, para. 62.

8.I. PÁLNE KOVÁCS, *AER Study on the state of regionalism in Europe. Country report on Hungary*, 2015, p. 10, available at <http://www.regscience.hu:8080/xmlui/handle/11155/871>

9. As for public schools, previously within the competences of local authorities, see Act CLXXXVIII of 2012 on the Takeover of Municipality-maintained Schools by the State and Act CXC of 2011 on National Public Education.

10. See T. M. HORVÁT, *From Municipalisation to centralism: Changes to Local Public Service Delivery in Hungary*, in H. WOLLMANN (ed.), *Public and Social Services in Europe*, Palgrave, 2016, 167.

11. LADNER, N. KEUFFER, H. BALDERSHEIM, (2015), *Local Autonomy Index for European countries (1990-2014)*, Release 1.0.

Brussels: European Commission. [http://ec.europa.eu/regional\\_policy/sources/docgener/studies/pdf/self\\_rule\\_index\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/self_rule_index_en.pdf)

12. OECD *Subnational Governments in OECD Countries Key Data 2018*, <https://www.oecd.org/regional/regional-policy/Subnational-governments-in-OECD-Countries-Key-Data-2018.pdf>

13. OECD regions and Cities at Glance Hungary 2018, <https://www.oecd.org/cfe/HUNGARY-Regions-and-Cities-2018.pdf>

**Table 1: Public budget expenditures in Hungary (2013)**

EXPENDITURE	% GDP	% GENERAL GOVERNMENT (same expenditure category)	% SUBNATIONAL GOVERNMENT
TOTAL EXPENDITURE (2013)	7.5%	15.1%	100%
CURRENT EXPENDITURE	5.6%	-	74.9%
STAFF EXPENDITURE	2.4%	23.3%	31.4%
INVESTMENT	1.6%	39.4%	21.8%

Source: OECD<sup>14</sup>

## 2.2. Economic Context

15. The global financial and economic crisis of 2008 hit Hungary harder than other East-Central European States because of its successive governments running excessive budget deficits, its high exposure to international financial markets, its dependence on foreign investment and its high levels of foreign currency denominated loans. The deficit of local governments represented an important part of the total deficit, and it aggravated after 2008 following consequences of the global financial crisis and because of significant reductions of financial resources of local authorities.

16. Consequently, in October 2008, Hungary was the beneficiary of a recovery plan worth 20 billion euros (12.3 billion loaned by the IMF, 6.5 by the European Union and 1 by the World Bank)<sup>15</sup>. The economic conditions and effects were compounded, firstly, by an erosion of confidence in the post-1989 political regime that had failed to deliver the mass prosperity that the citizens had been expecting from democracy by the European integration.<sup>16</sup>

17. As a result of EU funding and the fact that the government paid a close attention to the country's macroeconomic indicators, the pace of economic growth has picked up since 2012. In 2017, growth exceeded 4% - a pace that the economy maintained in 2018. Initially, growth was driven by exports and then investments. As employment started to expand, the recovery has broadened to private consumption and housing investment; a development that is being reinforced by double-digit wage growth. Moreover, the economy is increasingly facing capacity constraints, leading to higher imports eroding the current account surplus. Since the early 1990s, the main growth driver of the Hungarian economy has been foreign direct investments that have helped modernising production and supported the successful integration into global value chains. Nonetheless, income per capita remains low, but convergence towards OECD and EU average incomes has started to resume. Per capita GDP has reached two-thirds of the OECD average and slightly more in comparison with the EU average.<sup>17</sup>

18. The high reliance on foreign direct investment to drive growth has led to a regionally unbalanced growth pattern. The western and central regions – the main recipients of foreign investment – and Budapest area with its large positive agglomeration effects have grown faster than the rest of the country. The left-behind regions are characterised by low employment, a high number of social transfer recipients, depopulation and poor integration into regional and national supply chains.<sup>18</sup>

19. At local level, has been pointed out that the finances of the Hungarian local self-government were unstable in the years preceding the crisis: they were unable to carry out their duties, self-government debts continued to grow. Their incomes and the value of their revenues have decreased since 2008, the sum of their loans continued to grow, and the loans financed mostly their spending and not economic development, investments or reserves. Hungarian local self-governments tried to issue bonds also. The obligations of Hungarian municipalities increased six-fold to 3 billion Euros between 2002 and 2008. The problem was enhanced by the fact that a large part of local self-governments' obligations was in foreign currency, and the rise in the currency exchange rates increased the amount of the debts.<sup>19</sup>

14. <http://www.oecd.org/cfe/regional-policy/sngs-around-the-world.htm>

15. See CG(25)7FINAL 31 October 2013, Local and regional democracy in Hungary , para.23.

16. BTI 2018 Country Report-Hungary, in <https://www.bti-project.org/en/reports/country-reports/detail/itc/HUN/>

17. <https://www.oecd-ilibrary.org/sites/46f5b3fc-en/index.html?itemId=/content/component/46f5b3fc-en#figure-d1e1851>

18. <https://www.oecd-ilibrary.org/sites/c391eb9b-en/index.html?itemId=/content/component/c391eb9b-en>

19. A. FÁBIÁN, *Local Self-Government in Hungary: The Impact of Crisis*, in C. NUNES SILVA, J. BUČEK (eds.), *Local Government and Urban Governance in Europe*, Springer, 2017, pp.81-82

20. Finally, the so-called debt consolidation was decided, a very important tool for the management of local self-governments' debt. The Hungarian State took over 100 % of the debt in the case of local self-government with less than 5,000 inhabitants. In the case of local self-government with more than 5,000 inhabitants, the rate of the consolidation varied between 40 and 70%. First, the consolidation of municipalities with a population under 5,000 was implemented. The State paid back the total debt of 1710 settlements (with less than 5,000 inhabitants) in the amount of 74 billion HUF,<sup>20</sup> which came from 3848 contracts assumed. From the debt of settlements with a population over 5000, the Hungarian State took over 477 billion HUF (approx. 1.6 billion EUR). The last phase of consolidating municipalities took place in the spring of 2014. The remaining debts of municipalities with more than 5 thousand inhabitants have been taken over by the State. The total cost assumed ultimately amounted to 1344 billion HUF (approx. 4.5 billion EUR).<sup>21</sup>

21. Scholars pointed out the close link between debt consolidation and the process of recentralisation: "Although the bail-out has eased the pressure on local budgets, it is local democracy that has fallen victim to the debt consolidation. This is because the Hungarian government also took over many of the former responsibilities of the municipalities such as education, health care, and public utilities. As a consequence, local government expenditures fell from 12% of the GDP to 7.6% (and, simultaneously, Hungarian local self-government was downgraded to an empty shell".<sup>22</sup>

### 2.3 Political context

22. The parliamentary elections of April 2010 resulted in 263 seats for the FIDESZ-KDNP (out of 386). The MSZP (Hungarian Socialist Party) won 59 seats, while Jobbik (extreme right-wing party founded in 2003) entered Parliament for the first time with 47 seats. A recently created party, the LMP (left-wing ecologist) was represented with 16 seats. Accordingly, FIDESZ had a majority accounting for 68% of the seats, more than two thirds, enabling it to implement its programme and also to transform Hungary's institutions via a revision of the Constitution. Viktor ORBÁN, the FIDESZ party leader, who was Prime Minister between 1998 and 2002, has been the Prime Minister since 2010 up till now.

23. After the 2010 parliamentary elections, Hungary experienced a fast and intensive process of democratic backsliding, which is reflected by the deterioration of the indicators of the standards for rule of law and freedom protection.<sup>23</sup>

24. The constitutional reform process that led to the 2011 Fundamental Law should be understood against this background. The extensive constitutional reform departed from certain standards associated with constitutionalism and the rule of law. As a result, the constitutional regime now entrenches the political preferences of the ruling party through constitutional engineering and has gradually eroded a number of constitutional checks on political power.<sup>24</sup> The Venice Commission expressed its concern regarding the constitution-making process in Hungary.<sup>25</sup>

25. The unicameral National Assembly (Országgyűlés) is composed of 199 seats<sup>26</sup>, allocated in part through proportional vote, in part by the first-past-the-post system. The National Assembly elects the President (the Head of State) every five years. Since 2012, the Head of State is János ÁDER, who was re-elected in March 2017. Following each election, the President proposes the candidate for Prime Minister from the majority party or coalition in parliament, to be elected by parliament by an absolute majority. In the 2014 parliamentary elections, the centre-right FIDESZ-KDNP (Christian Democratic People's Party) alliance

20. The Hungarian currency is the Hungarian Forint, HUF.

21. A. FÁBIÁN, *Local Self-Government in Hungary: The Impact of Crisis*, in C. NUNES SILVA, J. BUČEK (eds.), *Local Government and Urban Governance in Europe*, Springer, 2017, p. 83, who quotes Act on State Budget of 2012, Article 76/C; Act on State Budget of 2013, Articles 72–75. See also C. LERNTNER, *The Debt Consolidation of Hungarian Local Governments*, in *Public Finance Quarterly*, 2014/33, p.10 ss.

22. G. MEDVE-BÁLINT, D. BOHLE, *Local Government Debt and EU Funds in the Eastern Member States: The Cases of Hungary and Poland*, n. 33, November 2016, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), p. 12.

23. FREEDOM HOUSE, *Nations in Transit 2018*, [https://freedomhouse.org/sites/default/files/NiT2018\\_Hungary.pdf](https://freedomhouse.org/sites/default/files/NiT2018_Hungary.pdf)

24. Council of Europe, Parliamentary Assembly, Doc. 14450 Part 4 (HU), 08 January 2018, Periodic Review, Hungary, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24302&lang=en>; see also R. UITZ, *Can you tell when an illiberal democracy is in the making? An appeal to comparative constitutional scholarship from Hungary*, in *International Journal of Constitutional Law*, Vol. 13, No. 1, January 2015, p. 280.

25. CDL-AD(2013)012 English 17/06/2013 - [Opinion on the Fourth Amendment to the Fundamental Law of Hungary Adopted by the Venice Commission at its 95th Plenary Session \(Venice, 14-15 June 2013\)](#); CDL-AD(2011)001 English 28/03/2011 - [Opinion on three legal questions arising in the process of drafting the New Constitution of Hungary - Adopted by the Venice Commission at its 86th Plenary Session \(Venice, 25-26 March 2011\)](#)

26. 106 members are directly elected in single-member constituencies by simple majority vote and 93 members are directly elected in a single nationwide constituency by party list proportional representation vote.

retained its two-thirds majority in parliament, receiving 45% of proportional votes but winning 91% of the country's single-member districts that are allocated through a first-past-the-post system.

26. In 2018 parliamentary elections, the FIDESZ-KDNP alliance got 49% of proportional votes, but it won in 91 single member districts (out of 106). In total, the ruling alliance won 133 seats, Jobbik 26, the Hungarian Socialist Party 20.

27. According to the OSCE report, the 2018 Hungarian parliamentary elections “were characterised by a pervasive overlap between state and ruling party resources, undermining contestants’ ability to compete on an equal basis. Voters had a wide range of political options but intimidating and xenophobic rhetoric, media bias and opaque campaign financing constricted the space for genuine political debate, hindering voters’ ability to make a fully-informed choice”.<sup>27</sup>

28. In 2017, Freedom House highlighted that “[t]here is no more important theatre for the defence of democracy than Central Europe”. Although Hungary is not an isolated case – Central and Eastern European countries saw their largest decline in democracy scores since the 2008 economic crisis – it has now the lowest democratic score in the Central European region.<sup>28</sup> According to the 2019 Freedom House report, “Hungary’s status declined from Free to Partly Free due to sustained attacks on the country’s democratic institutions by Prime Minister Viktor Orbán’s Fidesz party, which has used its parliamentary supermajority to impose restrictions on or assert control over the opposition, the media, religious groups, academia, NGOs, the courts, asylum seekers, and the private sector since 2010”.<sup>29</sup>

#### *2.4. Relations with the Council of Europe and European Union*

29. In recent years, developments in Hungary have raised concern in the Council of Europe. The Venice Commission expressed several very critical opinions on the laws related to the judiciary and fundamental rights and freedom, whereas the Parliamentary Assembly intensified its discussions regarding respect for the Council of Europe standards and honouring of membership obligations by the country.

30. In 2018, the Parliamentary Assembly pointed out that “While the authorities have publicly expressed their unquestionable commitment to Europe, there are many indications that the Hungarian Government is pursuing an increasingly national sovereigntist policy. Together with other countries in the Visegrád group, Hungary has continued to oppose some European policies, such as the refugee quota system. Hungary’s ambiguous attitude to its European affiliation seems apparent from the fact that on the one hand it stresses its membership of a community of values while, on the other hand, it declares itself to be an “illiberal democracy”, although the Prime Minister considered that “illiberal democracy” and belonging to the European Union were not incompatible. Furthermore, in a speech in February 2017, Viktor ORBÁN stated that countering the “diktat of Brussels” is one of the three main tasks for the State in 2017.<sup>14</sup> The recently adopted laws with regard to foreign universities and civil society organisations that receive foreign funds are symptomatic of this ambiguity”.<sup>30</sup>

31. In 2019, the Commissioner for human rights of the Council of Europe pointed out many human rights pitfalls on several interconnected issues: the human rights of asylum seekers and refugees, human rights defenders and civil society, independence of the judiciary and gender equality and women’s rights.<sup>31</sup>

32. As for the European Union, on 7 December 2017, the European Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that its Higher Education Law, as amended on 4 April 2017, disproportionately restricts European Union and non-EU universities in their operations and needs to be brought back into line with EU law.<sup>15</sup> On the same day, the European Commission referred Hungary to the Court of Justice of the European Union for its law on foreign-funded NGOs.

33. The degradation of the constitutional democracy in Hungary, highly criticized by constitutional law scholars worldwide, ultimately led to the launch of the Article 7 of the Treaty on European Union.

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27. OSCE, Office for Democratic Institutions and Human Rights, Hungary, Parliamentary Elections, 8 April 2018, ODIHR Limited Election Observation Mission, Final Report, <https://www.osce.org/odihr/elections/hungary/373603>

28. <https://freedomhouse.org/report/freedom-world/2017/hungary>

29. <https://freedomhouse.org/report/freedom-world/2019/hungary>

30. Council of Europe, Parliamentary Assembly, Doc. 14450 Part 4 (HU), cit., para 14.

31. <https://rm.coe.int/report-on-the-visit-to-hungary-from-4-to-8-february-2019-by-dunja-mija/1680942f0d>

The European Parliament adopted a resolution calling for the launching of Article 7(1) on 12 September 2018.<sup>32</sup>

### *2.5 Political developments at local level*

34. The Fundamental Law provides that elections for local representatives and mayors be held every five years starting in 2014, the former four-year term served by local representatives and mayors being replaced a five-year term.

35. During the local elections on 12 October 2014, members of the FIDESZ-KDNP alliance were elected mayors in 17 of the 19 cities in Hungary with over 50,000 inhabitants, including Budapest, where István TARLÓS had been head of the municipal government since 2010. Non-FIDESZ-KDNP mayors therefore led only two cities with over 50,000 inhabitants: Szeged (southern Hungary, pop. 162,000); and Békéscsaba (south-eastern Hungary, pop. 60,500). Members of the FIDESZ-KDNP alliance served as mayor in 17 of the 23 districts of Budapest, while members of the opposition served as mayor of the remaining 6 districts in the city.

36. Independents served as mayor in 2,447 – or just over 77% – of all the 3,177 cities, towns and villages in Hungary, while members of the FIDESZ-KDNP alliance served as mayor in 614 municipalities and members of other parties and party alliances served as mayor in the remaining 116 municipalities. Members of the FIDESZ-KDNP alliance won a total of 1,152 seats on municipal councils in towns and cities with more than 10,000 inhabitants, while members of Jobbik won 215 seats and those of various other parties and party alliances 911 seats. Members of the FIDESZ-KDNP alliance gained 20 of the 33 seats on the Budapest city council, while the Hungarian Socialist Party – six seats either independently or in alliance with other opposition parties and other parties – the remaining seven seats. Independents won 12,801 seats – or 87.9% of all seats – on municipal councils in towns and villages with fewer than 10,000 inhabitants, while members of the FIDESZ-KDNP alliance had 1,263 seats, members of Jobbik – 157 seats and members of other parties and party alliances – 340 seats.

37. The FIDESZ-KDNP alliance had a majority of members in all 19 county general assemblies. Jobbik won the second highest number of members in 15 county general assemblies, while the Hungarian Socialist Party gained the second highest number of members in one county general assembly. Jobbik and the Hungarian Socialist Party were tied for second in terms of the number of members in the remaining three county general assemblies.<sup>33</sup>

38. After the monitoring visit, the local elections took place in Hungary on 13 October 2019. The Fidesz-KDNP coalition won a majority in all county assemblies holding elections. However, the governing party lost both the Budapest city council and mayoralty. Opposition candidates won the majority of district mayoral races in Budapest and made gains nationwide, winning in 10 out of 23 major cities voting.

## **3. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK**

### **3.1 Local government system (constitutional and legislative framework, reforms)**

#### *3.1.1. Constitutional and legal framework of local government system*

39. The main rules concerning the functioning of local governments are established by the Fundamental Law of Hungary and by the Cardinal Act n. CLXXXIX of 2011 on Local Self-Government in Hungary, which entered into force beginning from 1 January 2012 (whereas several provisions entered into force on 1 January 2013 and others on the day of municipal elections of 2014).

40. The Fundamental Law was adopted on 18 April 2011 by the Hungarian Parliament as Hungary's new Constitution. It came into effect on 1 January 2012, abrogating Act No. XX of 1949 on the Constitution of the Republic of Hungary. According to Art. 31.3 of the Fundamental Law, the rules related to local governments

32. European Parliament, Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL) P8\_TA(2018)0340 [http://www.europarl.europa.eu/doceo/document/A-8-2018-0250\\_EN.pdf](http://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.pdf)

33. <https://theorangefiles.hu/local-government/>. See the official results (in Hungarian): <https://static.valasztas.hu/dyn/onk14/szavossz/hu/eredind.html>

are to be laid down in a Cardinal Act. This is a type of law which requires a two-thirds vote by the Members of the Parliament in attendance.<sup>34</sup>

41. The new Fundamental Law regulates the local self-government system differently from the relevant provisions of the previous Constitution, adopted during the political transition in 1990.

42. The territorial division of Hungary is specified in Article F of the part entitled “Foundation of the Fundamental Law”. Provisions pertaining to public authorities at local level can be found in the part entitled “Local self-government”.

43. According to Article 31.1, “In Hungary, local governments shall function to manage local public affairs and exercise local public power”. The previous Constitution defined the right to local self-government as a fundamental right belonging to local voters, but this rule has not been incorporated into the new regulations<sup>35</sup>. The Cardinal Act on Local Self-Government focuses on the management of local public affairs and on the exercise of local public powers, instead of the regulation of the legal protection against the government and the central public administration.<sup>36</sup>

44. Thus, the Parliament was entitled to define and re-define the share of powers between central and local self-government. On this basis, because of the economic crisis and the indebtedness of both central and local government budgets, the central government has “re-nationalised” a large part of local governments’ mandatory tasks. With this new regulation, important public services, which had been organised formerly by local self-government, became the responsibility of central government and the deconcentrated State agencies. For example, primary and secondary schools, health care and residential social care are mainly organised by deconcentrated agencies of central government.<sup>37</sup>

45. Another important change in the interpretation of the right to local self-government is the emphasis on the responsibility of local citizen, who “should reduce the common charges and contribute to the execution of the common tasks”.<sup>38</sup> It has been pointed out by scholars that these restrictions on local autonomy were recognised and justified by the government by referring to the global economic crisis and the country’s fiscal situation. According to this perspective, “the new system of local self-government underlies a new conception of the State, and a new approach concerning democracy and the principle of the rule of law. This new conception casts doubt upon the strength of local democracy and strictly subordinates it to the interests of the central government”.<sup>39</sup>

### 3.1.2 The local government system

#### *Structure of local government*

46. The structure of Hungarian local government still rests on two other pillars: municipal and county governments. Task performance (and financing) is focused on municipal level. Since 1990, county governments have been seeking their place in Hungarian local government administration<sup>40</sup> and in the last years their competences have been dramatically reduced.

47. The landscape of local authorities in Hungary is highly fragmented. The number of municipalities is high, and among them the smaller municipalities, with less than 500 people, represent more than one third of the total.<sup>41</sup>

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34. Article T (4) of the Fundamental Law: “Cardinal Acts shall be Acts, the adoption and amendment of which require the votes of two thirds of the Members of Parliament present”.

35. Article 42 of 1989 Constitution: “Eligible voters of the communities, cities, the capital and its districts, and the counties have the right to local government. Local government refers to independent, democratic management of local affairs and the exercise of local public authority in the interests of the local population”. However, we should point out that a provision in the 2011 Fundamental Law Article XXIII (1) states that “Every adult Hungarian citizen shall have the right to vote and to be voted for in elections of Members of Parliament, local government representatives and mayors, and Members of the European Parliament”.

36. A. PATYI, *Local Government*, in L. CSINK, B. SCHANDA, A. ZS. VARGA (eds.), *The Basic Law of Hungary, a First Commentary*, Clarus Press, 2012, Ebook.

37. A. FÁBIÁN, *Local Self-Government in Hungary: The Impact of Crisis*, in C. NUNES SILVA, J. BUČEK (eds.), *Local Government and Urban Governance in Europe*, Springer, 2017, p. 77.

38. Cardinal Act on Local Self-Government, Articles 2.1 and 8.1.

39. Observatory on Local Autonomy, *Local Self-Government in Hungary*, September 2014, available at [http://www.ola-europe.eu/index.php?elD=tx\\_nawsecuredl&u=0&file=fileadmin/user\\_upload/ressources/monographie/mono\\_en/mono\\_hungary\\_en\\_2\\_014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26](http://www.ola-europe.eu/index.php?elD=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_hungary_en_2_014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26)

40. See Recommendation 116 (2002) on regional democracy in Hungary.

41. We quote the data included in E. STEINER, *Introduction to the Hungarian Local Government System*, 2016, available at [http://www.manorka.net/uploads/images/Kiadv%C3%A1nyok/Local%20Governments\\_boritoval.pdf](http://www.manorka.net/uploads/images/Kiadv%C3%A1nyok/Local%20Governments_boritoval.pdf)

48. Hungary has 3,178 municipal local authorities (*település*) and 19 counties. 322 towns (Hungarian term: *város*, plural: *városok*); 2,809 villages (Hungarian: *község*, plural: *községek*). The number of towns can change, since villages can be elevated to town status by an act of the President. 23 of the towns are so-called urban counties (*megyei jogú város* – town with county rights). There are 23 towns with county's rights (*megyei jogú városok*, singular: *megyei jogú város*), which have more extended powers.

49. Hungary is subdivided into 19 counties (*megyék*, singular: *megye*). The counties are further subdivided into 174 districts (*járások*, singular: *járás*), as of 1 January 2013, which serve as divisions of State deconcentrated administration.<sup>42</sup>

50. Budapest, the capital city (*főváros*), is subdivided into 23 districts (*kerületek*, singular: *kerület*) as self-government units. It's a municipal and county (regional) level government too. It has a special status.

51. Beside the decentralisation, the deconcentrated State administration should be mentioned<sup>43</sup>. According to Article 17.3 of the Fundamental Law, "The county (capital) government offices are the regional administrative bodies of the government and are entrusted with general jurisdiction"<sup>44</sup>. Offices are located in the county seats as well as in Budapest in the case of the capital and Pest County. The government offices coordinate and facilitate the implementation of the government's tasks on a regional level (according to the French model of the *prefectures*). The offices are led by government commissioners who are appointed and dismissed by the Prime Minister. The commissioners act as the representatives of the government on the territory. According to Article 34(4) of the Fundamental Law the Government also ensures supervision of the legality of local governments through the capital or county government offices.

52. The government approved by decree the organisation and competence of administrative district offices in July 2012. By 1 January 2013, 175 offices had been established in the counties and 23 in the capital, employing 16,840 officials. The district offices are set up as the branch offices of the capital and county government offices. The government directly allocates the necessary resources. The district offices serve in the system of state administration as general authorities of first instance, while the government offices normally intervene as second instance authorities. The principal responsibility of the district offices is the fulfilment of state administration duties that fall below the county level.

53. The responsibilities and competences of local self-governments are exercised by local representative bodies. The Fundamental Law gives the people the right to directly elect their mayor and representatives<sup>45</sup>. The chairman of the county representative body is elected by the county representatives among their members. Local representative bodies are headed by mayors. Local representative bodies may elect committees and establish offices as defined by a Cardinal Act.<sup>46</sup>

#### *Competences of local government*

54. The place of local government within the organisation of the State has also been redefined by the Fundamental Law and the Cardinal Act on Local Self-Government.

55. Article 32 of the Fundamental Law sets forth that "In administering local public affairs local governments shall, to the extent permitted by law:

- a. adopt decrees;
- b. adopt decisions;
- c. perform autonomous administration;

42. Act XCIII of 2012 on the establishment of administrative districts and the amendment of specific related acts; Government Decree 218/2012. (VIII. 13.) on administrative district (municipal district) offices (Annex 1. point 13.2.), currently effective: Government Decree 66/2015. (III. 30.) on the capital and county government offices, and the administrative district (municipal district) offices.

43. OECD Public Governance Review, *Hungary: Towards a Strategic State Approach*, 2015, available at <https://www.oecd.org/publications/hungary-towards-a-strategic-state-approach-9789264213555-en.htm> p. 59 ss.

44. Fundamental Law, art. 17.3: "The capital or county government offices shall be the territorial state administration organs of the Government with general competence".

45. The electoral system is established by the Act 2010 L, on the election of local council members and mayors (*2010. évi L. törvény a helyi önkormányzati képviselők és polgármesterek választásáról*).

46. See Article 33 and Article 35 of the Fundamental Law.

- d. determine their regime of organisation and operation;
- e. exercise their rights as owners of local government properties;
- f. determine their budgets and perform independent financial management accordingly;
- g. engage in entrepreneurial activities with their assets and revenue available for the purpose, without jeopardising the performance of their compulsory tasks;
- h. decide on the types and rates of local taxes;
- i. create local government symbols and establish local decorations and honorary titles;
- j. ask for information, propose decisions and express their views to competent bodies;
- k. be free to associate with other local governments, establish alliances for the representation of interests, cooperate with the local governments of other countries within their competences, and be free to affiliate with international local government organisations, and
- l. exercise further statutory responsibilities and competences.

Acting within their competences, local governments shall adopt local decrees to regulate local social relations not regulated by an Act or by authority of an Act. Local decrees may not conflict with any other legislation”.

56. The Cardinal Act on Local Self-Government makes a distinction between local government and State administrative tasks and powers. It does not contain a comprehensive list of individual tasks and competences, but provides a framework for the provision of tasks, the content of which is determined by various specialised laws. There is no uniformity in tasks: the tasks at the level of basic municipalities (obliged to carry out all core mandatory tasks laid down by the law which satisfy the basic needs of the population and to provide access to the required public services within the territory of the given municipality); cities and administrative centres of districts (charged with the provision of basic services within their own territory and within the catchment area of the entire territory of the district whose provision it can guarantee in an economical, efficient manner, in compliance with the professional regulations); cities with county status (which implies the extension of service provision beyond the boundaries of the given municipality to the majority or the entirety of the county's territory); and the capital city and its districts and counties are all treated separately.<sup>47</sup>

57. Furthermore, local governments (municipal authorities) tasks are differentiated as mandatory (compulsory) and optional (voluntary).

58. The core mandatory tasks prescribed by the Cardinal Act on Local Self-Government are listed in Article 13. Nevertheless, it has to be considered that they must be attributed to the local authorities by specific laws: as a consequence, only some of the tasks listed in Article 13 fall within the competence of local authorities.

59. During the monitoring visit, the delegation was informed that one of the most important tasks remaining with municipalities is the management of pre-school education institutions.

60. The competences listed in Article 13 are:

- municipal development, municipal planning;
- municipal management (establishing and maintaining public cemeteries, public lighting, ensuring chimney-sweep services, developing and maintaining local public roads and their accessories, establishing and maintaining local parks and other public premises, ensuring the parking of motor-vehicles);

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47. Article 11: “(1) Villages, towns, county district seats, county boroughs, the capital and its districts and county self-governments may have different duties and powers. (2) When prescribing duties and powers legislation shall differentiate taking into account the nature of the duties and powers and the different characteristics of local governments, including in particular a) economic potential; b) the number of inhabitants; and c) the size of the administrative territory. (3) When designating duties legislation shall simultaneously define the minimum professional, personal, physical and financial means required for performing the duties and exercising the powers”.

- naming public premises and public institutions owned by the local government;
- providing basic health services and services aiming to promote a healthy lifestyle;
- sanitation (public hygiene, ensuring the cleanness of the town's environment, extermination of insects and rodents); kindergarten education;
- cultural services, especially public library service; theatres, support of performing arts groups, local protection of cultural heritage; support of local public education activity;
- social and child-welfare services and supplies;
- flat- and premises-management;
- ensuring the provision and rehabilitation of homeless people, as well as ensuring homelessness prevention;
- local environment and nature protection, water management, prevention of water damages;
- national defence, civil defence, catastrophe prevention, local public employment;
- tasks related to local taxes, economic organisation, and tourism;
- ensuring possibilities for sale – among the products determined by law – by small scale producers and agrarians, including the possibility of weekend marketing;
- sport, youth affairs;
- nationality affairs;
- contributing to the maintenance of public order in the municipality;
- local public transportation;
- waste management;
- district heating, and
- public water supplies.

61. Article 13.2 adds that “Legislation may identify other services to be provided by a local government as part of its common local affairs and locally deliverable public services”.

62. As concerns the optional local self-government tasks, three main groups can be discerned on the Cardinal Act. The first group is contained in Article 10.2, according to which “local governments are authorised to solve and handle local public affairs autonomously which do not fall within the statutory competence of another body”. The financial basis for administering public affairs on a voluntary basis must be treated separately from mandatory tasks in terms of the origin of financial resources, since the provision of voluntary tasks is financed from the independent incomes of authorities or from separate financial resources devoted to these objectives.

63. The second group of voluntary task provision is based on an agreement (contract) between the State and the local government (Article 10.3). In day-to-day practice, this is manifested in the contractual provision of state administrative tasks, but theoretically, other public tasks cannot be excluded from this category either. Authorisation by law is required for the conclusion of these agreements.

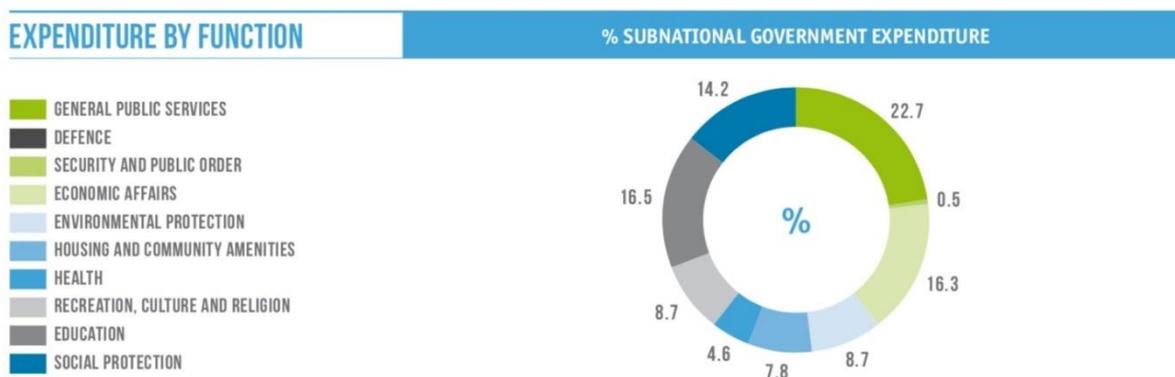
64. The third scope of voluntary tasks is the well-arranged taking over of affairs mentioned in Article 12, which establishes that a local government of a larger town with better economic performance may take over the mandatory responsibilities and competences of other municipal-level governments (or associations of municipalities) in case it is necessitated by the demands of population.

65. According to the Fundamental Law, a law may provide that mandatory tasks of local governments shall be performed through associations. Neighbouring communities with fewer than 2,000 inhabitants shall establish common offices. This provision affects more than 80% of municipalities.<sup>48</sup>

66. As for the delegated tasks, during the monitoring visit the delegation was informed that most of them have been transferred to the State deconcentrated administration, at district level (among them, the registry of population services). The human and material resources have been transferred as well.

67. As the State took over most of the competences of the counties, their main remaining competences are regional and rural development and spatial planning.<sup>49</sup>

**Table 2: Expenditures of subnational governments by function**



Source: OECD<sup>50</sup>

#### Financial resources

68. According to Article 32.1, f), of the Fundamental Law, local governments “shall determine their budgets and autonomously manage their affairs”. Article 34 provides that “For the performance of their mandatory functions and powers, local governments shall be entitled to proportionate budgetary and other financial support”.

69. The budgetary and financial aspects of local self-government have been highly affected by the 2011 reform. The previous system of normative and global supports from the central budget was transformed into a financial system based on the specific competences of local governments. Besides this change, a very strong budgetary control was introduced, which included limitations on borrowing, for which the authorisation of the Treasury is required.

70. Municipal tasks can be funded by own revenues, assigned central taxes and State subsidies.<sup>51</sup>

48. Observatory on Local Autonomy, *Local Self-Government in Hungary*, September 2014, available at [http://www.ola-europe.eu/index.php?elD=tx\\_nawsecuredl&u=0&file=fileadmin/user\\_upload/ressources/monographie/mono\\_en/mono\\_hungary\\_en\\_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26](http://www.ola-europe.eu/index.php?elD=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_hungary_en_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26)

49. See Cardinal Act on Local Self-Government, Article 27.1: “A county self-government is a regional self-government that performs territorial development, rural development, land-use planning and coordination duties as provided by law”.

50. <http://www.oecd.org/cfe/regional-policy/sngs-around-the-world.htm>

51. Observatory on Local Autonomy, *Local Self-Government in Hungary*, September 2014, available at [http://www.ola-europe.eu/index.php?elD=tx\\_nawsecuredl&u=0&file=fileadmin/user\\_upload/ressources/monographie/mono\\_en/mono\\_hungary\\_en\\_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26](http://www.ola-europe.eu/index.php?elD=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_hungary_en_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26)

**Table 3: Revenue of local government sector, by type**

REVENUE BY TYPE	% GDP	% GENERAL GOVERNMENT (same revenue category)	% SUBNATIONAL GOVERNMENT
TOTAL REVENUE (2013)	10.0%	21.2%	100%
TAX REVENUE	2.3%	8.9%	22.5%
GRANTS AND SUBSIDIES	6.7%	-	67.1%
OTHER REVENUES	1.0%	-	10.4%

Source: OECD<sup>52</sup>

71. As for their own revenues, they include income, fees, and charges for municipal services and municipal asset management, dividends, profits from municipal business activities, rent, funds received as private income for the local government, and local taxes, fees, and fines. Municipal taxes are the local business tax (representing the 74% of local taxes in 2013), the tourism tax, the municipal tax on individuals and businesses, the land tax, and the building tax.

72. The main changes concerning regulations on own-source revenues are the new limitations on local borrowing, with the aim to prevent local government debt. The permission of the Government for local government borrowing was introduced by Article 34(5) of the Fundamental Law. Detailed rules are established by Act No. CXCV of 2011 on the economic stability of Hungary. All loans and other transactions with the nature of loan (for example, municipal bonds) must be authorized by the Government. There are exceptions to this principle. For example, there is a de minimis rule, and illiquid loans do not need permission. Similarly, loans required for projects co-financed by the European Union and reorganisation credits linked to the municipal debt settlement process do not need the consent of the Government.

73. Assigned central taxes have continued to be part of local government revenues, but their significance has been undermined. Assigned central taxes equal 40% of the vehicle tax (levied by local tax authorities) and 100% of taxes paid on incomes resulting from rental of agricultural property.

74. The rules on State subsidies have significantly changed. In 2013, a task-based financing system was introduced. State subsidies have since been based on the mandatory (obligatory) tasks of municipalities. Firstly, they depend on the standards for services defined by legal norms. Efficient management, expected own source municipal revenue and actual revenues of the local governments are all taken into account for the determination of the subsidies.

75. The main principle of the task-based financing system is the additional nature: own source local government revenues are complemented by state subsidies, so local communities are interested in collecting their own revenues. Social care services, kindergarten services, and several cultural services are directly financed, and this funding are not integrated into the task-based funding.

76. Complementary state subsidies have remained in place: in exceptional cases, local governments that are disadvantaged through no fault of their own may receive this state subsidy in order to protect their viability. Those subsidies are especially important for small municipalities.

77. Counties are not allowed to levy taxes.

78. An equalisation mechanism does exist: the sums of sum of certain budgetary supports may be reduced by the expected, calculated local tax income. Those municipalities possessing low tax-income capacities (under 8,500 HUF), instead of deduction receive a supplement (with a supplement support of a certain percentage based on the amount of general supports), above this sum, the deduction takes place in single zones. The calculated income to be reduced is 0.55% of the tax base (previously 0.5%), in the case of local governments with very high tax income it might reach 0.65%.<sup>53</sup>

52. <http://www.oecd.org/cfe/regional-policy/sngs-around-the-world.htm>

53. We quote information included in E. STEINER, *Introduction to the Hungarian Local Government System*, 2016, available at [http://www.manorka.net/uploads/images/Kiadv%C3%A1nyok/Local%20Governments\\_boritoval.pdf](http://www.manorka.net/uploads/images/Kiadv%C3%A1nyok/Local%20Governments_boritoval.pdf)

79. In addition, in 2017, a so-called 'solidarity contribution' has been introduced.<sup>54</sup> This contribution is a new payment obligation on the municipalities with large local taxes incomes. The Act specifically exempted the capital city of Budapest from this obligation. The additional government revenue for the year 2017 was of HUF 21.3 billion. The contribution had a strong impact on the finances of the municipalities with important local taxes incomes. For example, the municipality of Budaörs, a small city situated next to Budapest, with a population of 30,000, had to pay a solidarity contribution of HUF 2.1 billion in 2017. The Act, that was approved as an ordinary law, with simple majority, was challenged in courts, without success.

80. Local governments are responsible for their economic management, and they can therefore also go bankrupt.

81. The legality of economic decisions of local governments is supervised by the county government office. The economic activities of local governments are controlled by the State Audit Office of Hungary, which controls and monitors the legality, expediency, and effectiveness of these decisions. Subsidies that are co-financed by the European Union are controlled by a separate regime. Economic control and monitoring within the local government organisation system have been partially modified. The monitoring powers of the finance committee of the representative body have been expanded. Similarly, to the former regulation, internal review is conducted by the clerk. The internal audit has been simplified by the Cardinal Act on Local Self-Government, because audits by independent auditing companies are no longer required.

#### *State supervision*

82. The main rules on State supervisions are provided directly by the Fundamental Law. As established by, Article 32.4, local governments must send their decrees to the metropolitan or county government office immediately after their publication. If the metropolitan or county government office finds the local government decree or any of its provisions unlawful, it may apply to a court: it may turn to the *Kúria* (Supreme Court) in case of illegality of a local government decree or to the first instance administrative court, in case of illegality of an individual local government decision.

83. The county government office examines the legality of decisions taken by local governments. According to Article 132 of the Cardinal Act on Local Self-Government,<sup>55</sup> within the scope of its powers in the field of review of legality, the capital city or the county government office:

- a. issue reminders of legality;
- b. take steps to convoke an assembly meeting, and will convoke assembly meetings in the cases provided in law;
- c. may take steps with the government in order to have motions submitted to the Constitutional Court for the review of the harmony between municipal decrees and the Fundamental Law;
- d. apply for a court review of municipal decisions;
- e. apply for court proceedings against local governments failing to perform duties relating to decision-making and the provision of services and for court orders to have decisions made in arrears;
- f. recommend to the minister responsible for the oversight of local governments to apply to the Government for the dissolution of assemblies operating in contravention of the Fundamental Law;
- g. take steps with the Hungarian State Treasury to suspend or withdraw a certain portion of support from the central budget as specified by law;
- h. file court action to terminate the mandate of a mayor who commits repeated legal violations;

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54. Act XC of 2016 on the central budget of Hungary for 2017 (Annex 2. point V). The contribution has been reiterated in the following years: Act C of 2017 on the central budget of Hungary for 2018 (Annex 2. point V); Act L of 2018 on the central budget of Hungary for 2019 (Annex 2. point V).

55. See also Government Decree No. 119/2012. (VI. 26.) on the detailed rules of legality supervision of local governments and Decree No. 23/2012. (IV. 25.) KIM (Ministry of Public Administration and Justice) on the order of submitting local government decrees and minutes to the competent government office

- i. initiate disciplinary proceedings against mayors of local governments and with mayors of local governments against clerks;
- j. apply to the State Audit Office for an audit of the financial management of a local government;
- k. sanction local governments with fines in its ambit of legal oversight in the cases set forth in this Act.

84. According to Article 136 of the Cardinal Act on Local Self-Government, "(1) In the event a municipal decree runs contrary to the Fundamental Law, the government office applies to the Government to submit a motion for a Constitutional Court review of the municipal decree by delivering to the Government via the minister responsible for the legal oversight of local governments a draft motion with form and content satisfying the requirements laid down in the Act on the Constitutional Court. The government office sends the motion along with the application to Government to the affected local government. (2) The government office has fifteen days from the receipt of information from the local government or from the set deadline elapsing without success to apply to the Curia of Hungary for a review of the harmony between a municipal decree and legal regulations. The government office sends the motion along to the affected local government simultaneously with filing for court review".

85. A State substitutive power is also provided. According to Article 32.5 of the Fundamental Law, the metropolitan or county government office may apply to a court for the establishment of the omission of a local government of its obligation that is based on an Act to adopt decrees or make decisions. According to Article 137 of the Cardinal Act on Local Self-Government, should the local government fail to comply with its obligation to adopt decrees or make decisions by the date determined by the court in its decision establishing omission, the court shall, at the initiative of the capital or county government office, order the head of the capital or county government office to adopt the local government decree or local government decision required to remedy the omission in the name of the local government.

86. According to Article 35.5 of the Fundamental Law, "At the motion of the Government – submitted after seeking the opinion of the Constitutional Court – the National Assembly shall dissolve representative bodies operating in conflict with the Fundamental Law".<sup>56</sup>

87. Hungarian local and regional authorities are also subject to financial supervision by the State Audit Office, provided for in Article 43 of the Fundamental Law, and Paragraphs 1 (3) and 5 (2) and (6) of the Act LXVI of 2011 on the State Audit Office of Hungary.

88. The State Audit Office, in compliance with international practices, does not content itself with a purely financial check focusing on the correct state of accounts and the viability of budgets. Acting within its functions laid down in the Act, the State Audit Office shall audit the implementation of the central budget, the management of public finances, the use of funds from public finances and the management of national assets. The State Audit Office shall carry out its audits according to the criteria of lawfulness, expediency and efficiency. The State Audit Office supports local governments through self-tests.

89. The audit report is public. The audited entity must prepare an action plan to remedy any shortcomings found. This plan is evaluated by the State Audit Office and, if it is found to be inadequate, it may give rise to legal actions.

90. As it was pointed out during the consultation process by the State Audit Office, this institution does not have any tools to clarify further the reasons of the shortcomings found during the audits. If, beyond the audit, it seems justified to further investigate these reasons, the State Audit Office will forward the irregularities identified by the audit to the competent body for the purpose of taking the necessary measures and conducting the procedures.

### **3.2 Status of the capital city**

91. The capital city, Budapest, enjoys a special status, corresponding to its role and population size: the city of Budapest accounts for 1,749,000 inhabitants (out of 9,764,000 of Hungary),<sup>57</sup> the metropolitan area of

56. It was stated in Res. No. 18/2013 of Constitutional Court that if a representative body does not conduct business, it could be classified as a violation of the Fundamental Law.

57. [https://www.ksh.hu/docs/eng/xstadat/xstadat\\_annual/i\\_wdsd001.html](https://www.ksh.hu/docs/eng/xstadat/xstadat_annual/i_wdsd001.html)

capital city approximately 3,000,000 inhabitants, 47% of national GDP and 33% of employment. Between 2000 and 2016, it generated 60% of the national GDP growth.<sup>58</sup>

92. The self-government of the capital is unique in Hungary: a two-tier arrangement operates in the capital<sup>59</sup>, comprising the municipality of the city and those of the 23 districts, which each has a mayor and an assembly. The body of representatives of the city is called *Fővárosi Közgyűlés* (Metropolitan Assembly). It is a unicameral body consisting of 33 members, which consists of the 23 mayors of the districts, 9 from the 'compensation' lists of political parties, and the Mayor of Budapest (who is elected directly).

93. The metropolitan self-government has the duties and powers of both a municipal and a county self-government. The districts have a status and powers comparable to those of municipalities. (Capital Law on Local Self-Government, Article 22). There is no hierarchy between the metropolitan government and the districts. A detailed regulation is established for the formation of a district in the capital and for changing district borders (Article 125).

94. On the contrary, no cooperation institutions exist between the capital city and the neighbouring municipalities and counties. However, in 2012 the Metropolitan Assembly and Pest County Assembly signed a cooperation agreement on the territorial and regional development affairs. An institutional framework for cooperation would be especially useful in public transportation sector.

95. During the monitoring visit, the delegation was informed that in 2018 a new authority was introduced, the Metropolitan Council for Public Investments (*Fővárosi Közfejlesztések Tanácsa – FKT*). According to the Government Decree 1509/2018. (X. 17.), the Council consists of ten members: five representatives of the government including the Prime minister who chairs the Council and five representatives of the metropolitan assembly, including the Mayor of Budapest who is Council's vice-chairman. Both sides (Government and the City of Budapest) have one vote in the Council, which is cast by the Prime minister and the Mayor. The Council takes its decisions unanimously. This institution takes all the investment decisions within the capital city. As the central government has a *de facto* veto power, the capital city cannot take any decision of investments without the consent of the State. During the consultation process, the City of Budapest pointed out that all the development decisions within the capital city require a consent between the State and the leadership of municipal city. Furthermore, the Mayor of Budapest has a veto power before the decision on development is taken or supported by the central government.

96. The rapporteurs underline with satisfaction the special status of the capital city. They believe that the newly established Metropolitan Council for Public Investments (*Fővárosi Közfejlesztések Tanácsa – FKT*) deserves some attention, as – although it could offer the opportunity of a better coordination with the State – it risks undermining the autonomy of the capital city in an important field such as public investments.

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

97. Hungary is a dualistic legal system. The treaties are applicable after transformation, i.e. if they are promulgated and published in a Hungarian legal instrument (act of Parliament or decree of the Government). The Charter was ratified on 21 March 1994, with entry into force on 1 July 1994. It was incorporated in the Hungarian legal system by the Act XV 1997. In addition, the Charter is explicitly mentioned in the preamble of the Cardinal Act on Local Self-Government.

98. The position of international treaties in the domestic legal order has not changed with the enactment of the 2011 Fundamental Law. Article Q of the 2011 Fundamental Law establishes: "(2) In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law. (3) Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by promulgation in laws".

99. Notwithstanding the limitation of its competences and scope of judicial review in the 2011 Fundamental Law, the Constitutional Court under Article 24.2, lett. f), continues to review the conflict between domestic legislation and international treaties. The Fundamental Law does neither regulate who may initiate this

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58. OECD, Regions and Cities at Glance Hungary 2018, <https://www.oecd.org/cfe/HUNGARY-Regions-and-Cities-2018.pdf>

59. Capital Act on Local Self-Government, Article 3.3: The self-government of the capital is both municipal and regional".

procedure, nor refer to the possibility of *ex officio* revision. This is defined in the Cardinal Act on the Constitutional Court.<sup>60</sup>

100. Scholars have pointed out that some legal problems arise from the Act on the Constitutional Court<sup>61</sup>. The Constitutional Court shall examine legal regulations conflicting with international treaties upon request or *ex officio* in the course of any of its proceedings. This proceeding may be requested by one quarter of MPs, the Government, the President of the Curia (Supreme Court), the Attorney General or the Commissioner for Fundamental Rights. Judges shall suspend judicial proceedings and initiate Constitutional Court proceedings if, in the course of the adjudication of a concrete case, they are bound to apply a legal regulation that they perceive to be contrary to an international treaty<sup>62</sup>.

101. As to the legal consequences, the new Act on the Constitutional Court is rather ambiguous at this point. Under Article 42.1 the Constitutional Court shall annul the domestic legal act conflicting with an international treaty, if the given domestic legal act may not conflict with the act promulgating the given international treaty on the basis of the Fundamental Law: i.e., if an international treaty is promulgated by an act of Parliament, and the challenged domestic legal act is e.g. a government decree then the latter shall be annulled. Under Article 42.2 the Constitutional Court shall call the Government or the law-maker to eliminate the conflict, if a domestic legal act conflicts with an international treaty, and the act promulgating the given international treaty may not conflict with the concerned domestic legal act on the basis of the Fundamental Law. That is the case when an international treaty is promulgated by a government decree, and the domestic legal act conflicting with it is an act of Parliament.

102. The new regulation does not answer the question of the same rank collisions, i.e. if the international treaty is promulgated by the act of Parliament, and the domestic legal act conflicting with it is also the act of Parliament.

103. Nevertheless, during the monitoring visit, the delegation was told, in the meeting with the Constitutional Court, that the Charter is considered by the Court as a tool of interpretation and as standard of judgement, when invoked by the claim.<sup>63</sup> In the last few years, the Charter was invoked by a parliamentary minority in the complaint against the 2017 budgetary law, introducing the 'solidarity contribution'. However, in this case the Court did not consider the legislation to be inconsistent with Article 9 of the Charter.<sup>64</sup> During the consultation process, several interlocutors criticised this decision and, more generally, the narrow interpretation given by the Constitutional Court to the Charter, which, according to them, risks undermining its effective legal status.

104. The rapporteurs positively note the fact that the Charter formally enjoys a supra-legal status in Hungary, since it is enshrined in the cardinal law on local self-government (Cardinal Act No. CLXXXIX of 2011). However, they consider that it has to be coupled with an effective interpretation given by independent courts.

### 3.4 Previous Congress reports and recommendations

105. The previous monitoring visit in Hungary was carried out in 2012 (soon after the entry into force of the new Fundamental Law and of the Cardinal Act on Local-Self Government) and it resulted in the Recommendation 341 (2013).<sup>65</sup> In the Monitoring Report,<sup>66</sup> the Congress expressed "its deep concern"

60. According to the Act CLI of 2011 on the Constitutional Court, the revision either takes place *ex officio*, or upon the initiation of one-fourth of the MPs, the Government, the president of the Supreme Court, the Prosecutor General, the Commissioner for Fundamental Rights, or the judge of any court of law if in a given case s/he shall apply a domestic legislative act conflicting with an international treaty.  
61. A. WYROZUMSKA (ed.), *Transnational Judicial Dialogue on International Law in Central and Eastern Europe. Annex - Country Reports, Country Report – Hungary*, University of Łódź, 2017, p. 41 ss.

62. Act on the Constitutional Court, Article 32.

63. the Constitutional Court only provided information in Hungarian, which could not be incorporated into this report.

64. Constitutional Court, Decision 3383/2018. (XII. 14.) of the Constitutional Court, on certain provisions of the Act XC 2016 of the Central Budget of Hungary of the Year 2017 regarding the lack of conformity with an international treaty (solidarity contribution of local governments) (V/1231/2017.). 54 MPs initiated the constitutional review of the annual budget act of 2017 (Act XC of 2016) arguing that some of its provisions are in contrast with Art. 9 of the European Charter, more exactly, the law violates the economic autonomy of local authorities and the principle of concomitant (proportionate) finance. The Court refused the petition pointing out that the Charter itself allows financial equalisation between local authorities, and the contested provisions (empowering the central government to deprive local tax revenues from municipalities) aim at equalizing the disparities of the 'tax-revenue strength' of the various local governments. The Court also did not worry about that the central government withdraw more resources from richer municipalities than the amount of aid it redistributed to poorer municipalities.

See <http://public.mkab.hu/dev/dontesek.nsf/0/0562A7DFE9F34C4CC125814D0058EEB4?OpenDocument>

65. A first monitoring mission to Hungary in 2002 resulted in Recommendation 116 (2002) on Regional democracy in Hungary.

66. CG(25)7FINAL 31 October 2013, para 189.

regarding the situation of local democracy. It considered that “a global movement to return powers to the center” was under way in Hungary without the economic crisis to be considered as an argument for taking back powers from the local level. The report reiterated the view that the principle of local self-government should not be interpreted differently depending on the economic context.

106. Recommendation 341 (2013) asked the Hungarian authorities to revise the Cardinal Act to explicitly guaranteed the principle of local self-government; to revise the legislation concerning local authorities' mandatory tasks and functions to extend the range of powers normally assigned to them on the basis of the principles of decentralisation and subsidiarity; to grant local authorities financial autonomy to enable them to exercise their powers properly, by adjusting the level of grants allocated by the central government to local authorities and by limiting central government supervision of the management of local finance; to ensure that local and regional authorities are equipped with the administrative structures and resources needed for performing their tasks, while at the same time ensuring that elected councils are retained, including in small municipalities; to consult local authorities and their national associations; to revise the legislation in order to provide local authorities with an effective judicial remedy; and to strengthen the position of counties.

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

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

<b>Article 2 – Constitutional and legal foundation for local self-government</b>
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The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.
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107. Article 2 requires that the principle of local self-government be enshrined in law, preferably in the Constitution.

108. The 2013 report pointed out that in Hungary the principle of local self-government is not explicitly enshrined either in the Constitution or in legislation and argued that the right to local self-government is not presented as a fundamental principle of Hungarian institutions.<sup>67</sup> The revision of the Cardinal Act on Local Self-Government was recommended so that the principle of local self-government is explicitly guaranteed in legislation and in practice.

109. However, the rapporteurs of the present report believe that this conclusion can be tempered by the explicit reference, in the preamble to the Cardinal Act on Local Self-Government, to the Charter<sup>68</sup> – which enshrines the principle of local self-government – and that the principle of local self-government can therefore be considered to be formally recognised in legislation.

110. In the rapporteurs' view, both the Constitution and legislation also contain some important elements of this principle. Article 31.1 of the Fundamental Law establishes that “In Hungary, local governments shall function to manage local public affairs and exercise local public power”. Articles 31 and 32 of the Constitution guarantee the existence of local authorities, although the Constitution stipulates that the powers of local authorities are exercised “within the limits of the law” which leaves the legislature with considerable room for manoeuvre.

111. Article 2.1 of the Cardinal Act on Local Self-Government sets out that “Local self-governance is the right of the community of electors in a settlement or a county to enforce the responsibility of the citizens, facilitating constructive cooperation within the local community”. However, the Cardinal Act focuses especially on the “sense of responsibility of citizens” and on the “rationalisation” of public services, much more than on local autonomy and self-government.

67. See P. TILK, *The main changes in the system of local government in Hungary after the commencement of the fundamental Law*, in *Studia Parvno-Economiczne*, 2014, 95 ss., p. 99.

68. Extract from the Preamble of Cardinal Act on Local Self-Government No. CLXXXIX of 2011: “...*The National Assembly, respecting the local government traditions of our nation, in order to complete the rights of local governments as defined in the Fundamental Law, create the conditions necessary for local self-government, strengthen national co-operation, promote the self-sustaining capacity of settlements, as well as strengthen the local community's ability to self-care, taking account of the principles laid down in the European Charter of Local Self-Government, for implementing the Fundamental Law ...*”.

112. Therefore, the rapporteurs consider that, even though guaranteed in domestic law, the principle of local self-government could indeed be more explicitly recognised in legislation and in practice.

113. In light of the preceding considerations, the rapporteurs conclude that the requirements of Article 2 of the Charter are formally complied with in Hungary, although, they are of the opinion that the legislation could be improved to anchor the principle of local self-government more explicitly in order to ensure its full respect in practice.

## 4.2 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.

#### 4.2.1 Article 3.1

114. The main question that must be addressed under this heading is whether, in the present situation, Hungarian municipalities and counties regulate and manage a “substantial share of public affairs under their own responsibility and in the interests of the local population”. This provision requires an assessment which takes into account the rather “subjective” and relative nature of such concepts as “ability”, “a substantial share of public affairs”, “under their own responsibility” and “in the interests of the local population” since no official or universal method of measuring such substantial character has yet been developed. The question must be addressed considering the historical evolution, the culture and the constitutional traditions of the country under analysis. It is also closely linked to the assessment of the compliance with other parts of the Charter, such as Articles 4, 8 and 9.

115. In order to assess compliance with this provision, both legislative and factual aspects should be taken into consideration.

116. In Hungary, local government authorities have regulatory powers. Based on Article T of the Fundamental Law, the decrees of local government are legal acts in which a generally binding rule of conduct may be determined. The normative power of local authorities is regulated in detail by the Cardinal Act on Local Self-Government.

117. Nevertheless, the part of public affairs local authorities can regulate and manage is definitely limited. The share of public affairs entrusted to local government has decreased very significantly. The financial autonomy of local governments has severely reduced, strengthening the control of central government over local government finance. In addition, numerous powers hitherto exercised by local government are described as being “naturally” recentralised. In particular, health and social care as much as education have been almost completely centralized. All three sectors, accounting for 86% of local expenditure, which were previously a matter for the municipalities and counties, have been transferred to the central level. In the new system of powers, counties now have only competences on rural development, regional development, regional planning and coordination.

118. Another indicator of the “importance” or the political and social role of local government in a country is the local government expenditure in the national general government consolidated budget, especially in comparison with other EU countries. In Hungary, as previously indicated, the local authorities manage only 12.9% of the total public expenditures, which is equivalent to 6% of GDP.

119. Recommendation 341 (2013) called the Hungarian government to “revise the legislation concerning local authorities’ mandatory tasks and functions so as to extend the range of powers normally assigned to them on the basis of the principles of decentralisation and subsidiarity”.

120. The process of recentralisation that affected several competences already transferred to local authorities, already outlined in the 2013 report, has not been reversed in the subsequent period and the Recommendation 341 (2013) has not been fulfilled.

121. It should especially be pointed out the transfer of many competences of local government to the new districts, introduced from 1 January 2013, which serve as divisions of State deconcentrated administration.

122. During the consultation process, the government opposed the views expressed by the rapporteurs, in particular regarding the focus on re-centralisation of certain competences related to public services. It explained that this re-centralisation should be considered as building “a strong, active and efficient State”. The government pointed out that before 2010 a significant portion of public services had been provided by local self-governments, resulting in unacceptable differences in the quality of services due to economic discrepancies among municipalities, and essentially transferring the increasing social tensions to the local authorities along with steadily decreasing resources”.

123. The rapporteurs do not share this approach. For a signatory State to comply with Article 3.1 of the Charter, the goal of ensuring an equal level of public services must be achieved by other tools than the transfer of most basic competences of local authorities to State institutions: primarily, by granting to local authorities’ sufficient financial resources and through implementing a fair and effective equalisation instrument, as indicated in Article 9 of the Charter.

124. In light of the preceding considerations, it has to be reiterated that the requirements of Article 3.1 of the Charter are not met in Hungary.

#### 4.2.2 Article 3.2

125. As for Article 3, paragraph 2, the right to self-government is exercised in Hungary by elected bodies.

126. According to Article 33 of the Fundamental Law, “(1) The functions and powers of a local government shall be exercised by its representative body. (2) A local representative body shall be headed by the mayor. The president of a county representative body shall be elected by the county representative body from among its members for the term of its mandate”. Article 35 establishes that: “(1) Local government representatives and mayors shall be elected by universal and equal suffrage in a direct and secret ballot, in elections which guarantee the free expression of the will of the voters, in a manner laid down in a cardinal Act”.

127. The representative governing body at municipal level is the municipal assembly, while the municipality’s executive organ is the mayor. Both of them are directly elected by citizens, for a term of five years (since 2014, it was four years before 2014). Although the assembly cannot dismiss the mayor, it can enforce his/her responsibility. Actually, representative bodies may declare their own dissolution, as provided for by a cardinal act (Article 35.4 Fundamental Law). Upon a representative body dissolving itself or upon it being dissolved, the mandate of the mayor shall also terminate (Article 35.6). Therefore, for the municipal assembly to early terminate the mandate of the mayor, its own dissolution is required, in accordance with the principle “*simul stabunt, simul cadent*”.

128. In the counties, the president is elected by the assembly among its members. He or she cannot be dismissed earlier, although it would be possible, as at municipal level, an earlier dissolution of the assembly by the way of a declaration of its own dissolution, which implies also the termination of the mandate of the president of the county.

129. In conclusion, it seems to the rapporteurs that the requirements of Article 3.2 are satisfied in Hungary.

#### 4.3 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.

#### 4.3.1 Article 4.1

130. Article 4, paragraph 1 of the Charter requires that the basic powers and responsibilities of local authorities are prescribed by the constitution or by statute.

131. The Fundamental Law contains some general principles in Article 32, whereas the Cardinal Act on Local Self-Government establishes, as a matter of principle, a list of tasks (Article 13), the content of which is determined by various specialized laws. The regulation makes a distinction between local authorities, differentiating the tasks according to a territorial perspective.

132. Therefore, it appears to the rapporteurs that overall Article 4, paragraph 1, is respected in Hungary.

#### 4.3.2 Article 4.2

133. As for Article 4, paragraph 2 of the Charter, according to which “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”, in Hungary local authorities can provide optional tasks, i.e. tasks which are not required by acts.

134. The main aim of local government is the fulfilment of the mandatory tasks; municipalities can provide the optional tasks only if strict legal conditions are met. Firstly, only local public affairs may be performed as an optional task. Municipalities can perform such a task, which does not belong to the responsibility of the central government<sup>69</sup>.

135. Municipalities may freely undertake optional tasks determined on the basis of the population’s requirements and the availability of financial resources, but voluntarily undertaken local public affairs cannot endanger the fulfilment of obligatory local government tasks and powers prescribed by the law, and they can be financed by the municipality’s income or by separate resources set aside for this purpose.

136. During the monitoring visit the delegation was informed that, in practice, it is almost impossible for local government, especially for small municipalities, to undertake optional tasks, considering the limited financial resources. In this respect, as on many other issues, an enormous difference exists between the bigger towns and the small villages.

137. The competences of the counties are even more limited. They are not empowered by a “general competence”. Their tasks are limited to territorial development, as stated in Article 27.1 of the Cardinal Act on Local Self-Government. Moreover, rapporteurs were informed that the county self-governments are totally ignored in practice even with regard to their only field of competence, the development policy. The counties have no formal decision-making power, only preparatory and advisory tasks in the distribution of EU subsidies. The role of intermediary and management bodies lies with the central government.

138. Therefore, the rapporteurs consider that Article 4, paragraph 2, is not respected in Hungary.

#### 4.3.3 Article 4.3

139. Article 4, paragraph 3 of the Charter articulates the general principle of subsidiarity. It establishes that “Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy”.

140. This principle is neither enshrined in legislation in Hungary, nor applied in practice. As it was pointed out in 2013 report, the allocation of public responsibilities previously managed by local authorities to State

69. A. FÁBIÁN, *Local Self-Government in Hungary: The Impact of Crisis*, in C. NUNES SILVA, J. BUČEK (eds.), *Local Government and Urban Governance in Europe*, Springer, 2017, p. 77.

deconcentrated administration or to the central government happened without taking into account the principle of subsidiarity. The Recommendation 341 (2013) asked the Hungarian government to “revise the legislation concerning local authorities’ mandatory tasks and functions so as to extend the range of powers normally assigned to them on the basis of the principles of decentralisation and subsidiarity”.

141. Since then, the situation has not changed, and the competences of local governments remain limited. During the consultation process, the Hungarian government pointed out that “the aim in transforming the major health and social care systems was not to centralise powers, but to improve the efficiency of public services operated in a fragmented and uneconomical manner”. It added that “none of the Charter’s articles prohibits the re-designation of specific State (public administration) functions and public services falling within local government competence to be taken over by public authorities, e.g. with a view to improving the efficiency and quality of services for the citizens”.

142. The rapporteurs do not agree with this view. They remind that Article 4.3 requires that public responsibilities should be exercised “in preference” closest to the citizen. In this respect, it is essentially a political principle since its aim is to bring decision-making as close as possible to the citizen. Allocation of responsibility to another authority which is less close to the citizen is possible, but it should weigh up “the extent” (*size or scale*) and “nature” of the task itself as well as the requirements of “efficiency” (not effectiveness) and “economy” (of scale, of scope and of minimising costs). A generic reference to the will of “improving the efficiency and quality of services for the citizens” cannot be considered a sufficient justification, especially considering the extent of this allocation, which had an impact on the “substantial share of public affairs” under Article 3.1 of the Charter.

143. Therefore, it has to be reiterated that the requirements of Article 4.3 of the Charter are not complied with in Hungary.

#### **4.3.4 Article 4.4**

144. Article 4, paragraph 4, provides that “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”.

145. As it was already underlined by the 2013 report, the competences of local government in Hungary experienced a severe reduction after 2011 constitutional and legislative reforms, as many tasks have been recentralised by the State, or devolved to State deconcentrated administration. However, this does not mean that the remaining powers of local authorities are full and exclusive. It happens quite often that local authorities are bound by many legal and factual constraints, further reducing their powers.

146. During the monitoring visit, the delegation was informed that this happened in the waste management.<sup>70</sup> Under the terms of the Cardinal Act on Local Self-Government, waste management is a mandatory duty of the local government. For many decades, municipalities resorted to their own companies, which also collected the waste collection fee. The new regulation removed the right to levy the waste collection fee from the waste handling public service providers (including local self-government companies) and this right was entitled to a State company set up for this purpose, so that this company could issue bills to residents. In theory, the legal regulation stipulated that this State company then shares with the public service providers the fees collected from the residents, irrespective of the actual costs, but in practice this become very complicated as the State company was unable, or only partially able to issue bills to residents, and as a consequence it did not have the funds, or only the partial funds to re-allocate to the public service providers. In addition, the local governments were forced to establish associations, and these associations then carried out waste handling with the involvement of the former public service providers as sub-contractors. Since the associations did not receive money, or only received money in part and delayed, from the central company, because it could not collect the fees properly from residents, was consequently unable to pay the sub-contractor, determining constant problems with waste collection.

147. Therefore, the rapporteurs consider that Article 4, paragraph 4 of the Charter is not respected in Hungary.

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70. Act CLXXXV of 2012 on Waste.

#### 4.3.5 Article 4.5

148. Article 4, paragraph 5, refers to delegated responsibilities, establishing that local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

149. In Hungary, most of the delegated administrative powers were taken back by the central government from local officials (mainly from the town hall clerks). Since 1 January 2013, almost all the local and regional state administrative tasks and functions have been carried out by the newly established 198 district offices, which are the subordinate units of the county governmental offices.<sup>71</sup> Although the delegated tasks have always been State administrative functions (earlier delegated to municipal officials), as a consequence of their recentralisation, the mayor's offices have lost a large part of personnel and a large amount of financial resources.

150. Therefore, the rapporteurs are of the opinion that Article 4, paragraph 5, can be considered only partially respected in Hungary.

#### 4.3.6 Article 4.6

151. Article 4 para. 6 of the Charter provides that "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". This issue was addressed in Recommendation 341 (2013), according to which the Hungarian authorities had to "consult local authorities and their national associations and define the consultation partners so that appropriate and effective consultation is arranged, in practice, within reasonable deadlines on all issues of interest to local authorities".

152. Since then, no new legal mechanisms of consultation have been introduced in the Hungarian legal system.<sup>72</sup>

153. As a matter of fact, the delegation received contradictory information about the practice of consultation, as some local authorities' representatives did not complain about the lack of consultation, whereas other local representatives pointed out that local governments are not consulted by the central government and parliament. It was underlined that, as the law establishes that the government should consult with the parties affected by the legislation, the most important laws are submitted as private member's motions, or as committee amendment motions, in order to avoid consultation. For example, the provisions on the solidarity contribution were introduced as committee amendment proposal, without any prior impact study or consultation. As for consultation via the National Cooperation Council of Local-Self Government (composed of representatives of the government and the presidents of the associations of local authorities) – which the Hungarian government mentioned in its comments to the draft report during the consultation procedure – according to the interlocutors, it cannot be considered as an effective tool, due to the time shortage or sometimes sabotage of the consultation meetings.

154. The delegation was informed that local authorities led by the opposition parties are experiencing difficulties in getting answers from the government and, in general, they are not consulted by the State authorities.

155. Therefore, the rapporteurs believe that the requirements of Article 4.6 of the Charter are not complied with in Hungary.

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71. Act XCIII of 2012 on the establishment of administrative districts and the amendment of specific related acts, Government Decree 218/2012. (VIII. 13) on administrative district (municipal district) offices.

72. Act CXXX of 2010 on Legislation, Section 19: § (1) "If an Act explicitly grants the right to a state or local government organisation or another organisation to provide an opinion on draft laws concerning its legal status or its functions, those preparing such laws shall ensure that the organ concerned can exercise this right." In Point 14 of Government Decree 1144/2010. (VII. 7) on the Rules of Procedures of the Government ("If the motion affects the scope of tasks of local or nationality self-governments, the draft must be sent to the relevant national self-government interest representation bodies for opinions. The mayor of Budapest or the chair of the county assembly must be involved in the drafting of governmental decisions affecting the authority of the municipal or county self-government."), the government prescribed as obligatory on itself the need to arrange consultation. See also Government Decree 1128/2012, which establishes a "National Cooperation Council of Local Self-Government".

#### 4.4 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.

156. This Article requires that local communities should be consulted in case of changes of local authorities' boundaries.

157. The Cardinal Law on Local Self-Government establishes, in Article 125.4, that the territorial structure of Hungary is decided by Parliament, and therefore – after obtaining the opinion of the given municipalities – the consolidation and division of counties, borders, the name and seat of counties, and the formation of the capital districts and the borders of the capital are defined by a Resolution from Parliament.

158. During the monitoring visit the issue was not raised. Although local government is highly fragmented in Hungary and there are many small villages experiencing serious problems in managing their tasks, consolidation is not an option in Hungary and the principle “one village, one local authority” is applied.

159. The rapporteurs consider that the requirements of Article 5 are satisfied in Hungary.

#### 4.5 Article 6 – Appropriate administrative structures and resources

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

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

##### 4.5.1 Article 6.1

160. Article 6, paragraph 1 of the Charter provides that local authorities shall be able to determine their own internal administrative structure.

161. The Fundamental Law (Article 32.1 d) entitles local governments to decide on their own administrative structure, as well as the rules of their operation. The legal basis of the local administrative structure of a local government is the Rules of Organisation and Operation that must be adopted in the form of a Decree by the body of representatives, which must respect the legislative provisions. The Cardinal Act on Local Self-Government enumerates the organs of the local authority, including its administration, under the name *mayor's office*, among them.

162. Not all towns and villages have their own administration, due to economic reasons. According to the Cardinal Act on Local Self-Government (Article 85), in small villages with fewer than 2,000 residents, the administration of local governments operates in a form and under the name *joint local government office* if the concerned villages can be found in the same district and their administrative borders are separated by no more than the administrative territory of another town.<sup>73</sup> Villages with more than two 2,000 residents may also be affiliated to a joint local government office. Villages affiliated with such a joint local government office are required to have at least 2,000 residents in total, or the joint local government office must cover at least seven towns in order to create an efficient administration.

163. While the office is directed by the mayor, it is headed by the chief executive (also called clerk). The chief executive exercises employment rights in respect to the officials and employees of the office and exercises other employment rights in respect to his assistants. Appointment, remuneration, management appointment, dismissal, withdrawal of management appointment, and the rewarding of certain public officials and employees of the local government office require the consent of the mayor as specified by himself. The chief executive is obliged to report annually to the body of representatives on the activities of the office. The chief

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73. I. BALÁZS, *Une politique nouvelle de l'intercommunalité en Hongrie: les bureaux communs et obligatoires*, in L. VANDELLI, S. GUÉRARD (eds.), *The Impact of the Economic Crisis on Local Governments in Europe: L'impact de la crise économique sur les collectivités locales en Europe*, Institut Universitaire Varenne, 2017, pp. 447-455.

executive is appointed by the mayor for an undetermined period on the basis of open competition. Qualification – a BA in public administration or MA in law – is required by law, and consequently, the chief executive represents permanence and proficiency in the office. Proficiency includes ensuring the legality of the decisions made by local government organs and preparing the decisions of the mayor on state administration matters.<sup>74</sup>

164. During the consultation process, the Hungarian government pointed out that the “joint local government” is a consequence of the highly fragmented structure of local government in Hungary (the smallest settlement has only 9 inhabitants) and that the employees of the local government office are exclusively made up of local government officials engaged by the specific local government, or the local governments to operate a joint office.

165. Therefore, it appears to the rapporteurs that in this respect, the situation in Hungary partially complies with Article 6.1.

#### 4.5.2 Article 6.2

166. Article 6, paragraph 2 of the Charter refers to the conditions of service of local government employees: they shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence.

167. A parliamentary act regulates the main elements of the status of civil servants, most of the dispositions actually concern both local civil servants and Cabinet civil servants. Consequently, there are considerable differences between the status of civil servants and that of private employees, while the differences between the two categories of civil servants are not so significant.<sup>75</sup>

168. Differences between local civil servants and civil servants under the Government’s direction are given by Chapter VIII of the Act<sup>76</sup>. Employer’s rights over civil servants of the mayor’s office are exercised by the chief executive, and strategic decisions – such as a staff reductions or general pay raises, meaning fixing the base salary, as well as holidays for the administration – are made by the body of representatives. In local administration, rules of incompatibility might be less strict, given the difficulty of finding the adequate and qualified staff for a post in a small village.

169. Although it must retain the weekly number of working hours, the body of representatives is entitled to determine a daily work schedule different than the general one fixed by the Act for the civil service as a whole. The system of promotion is generally the same, taking into account time spent in service and educational background. The same grades can be achieved in local administration as under the direction of the Government. Remuneration is one of the fields where particularities can be found in local administration in comparison to Cabinet civil servants. Some important decisions are made by the body of representatives in the framework established by the Act.

170. During the monitoring visit, the delegation was informed that staff of local self-government institutions are legally public employees, whose salaries are fixed centrally and are significantly below pay scales in the private sphere. This results in a migration of labour - for example, the migration of health workers and those employed in the social sphere is a problem afflicting Hungary as a whole - and it is not merely a problem for the local self-government, but it also affects the State sector. During the consultation process the Hungarian government pointed out that “In 2017-2019 considerable changes occurred due to salary increase as a result of significantly raised and guaranteed minimum wage. To this end the funds required for the local governments are provided by the annual budget”.

171. Recommendation 341 (2013) asked the Hungarian government to “ensure that local and regional authorities are equipped with the administrative structures and resources needed for performing their tasks”.

172. In light of the preceding considerations, it has to be concluded that the requirements of Article 6.2 of the Charter are not complied with in Hungary.

74. Observatory on Local Autonomy, *Local Self-Government in Hungary*, September 2014, p. 52, available at [http://www.ola-europe.eu/index.php?eID=tx\\_nawsecuredl&u=0&file=fileadmin/user\\_upload/ressources/monographie/mono\\_en/mono\\_hungary\\_en\\_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26](http://www.ola-europe.eu/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_hungary_en_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26)

75. Observatory on Local Autonomy, *Local Self-Government in Hungary*, September 2014, available at [http://www.ola-europe.eu/index.php?eID=tx\\_nawsecuredl&u=0&file=fileadmin/user\\_upload/ressources/monographie/mono\\_en/mono\\_hungary\\_en\\_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26](http://www.ola-europe.eu/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_hungary_en_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26)

76. Act CXIX of 2011 on civil service.

#### 4.6 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.

##### 4.6.1 Article 7.1

173. The purpose of Article 7, paragraph 1, is to guarantee the free exercise of their functions by elected representatives.

174. In Hungary, according to the Fundamental Law, local representatives are elected for five years and cannot be recalled.

175. Their mandate shall terminate before the end of the five years term in the cases mentioned in Article 29 of the Cardinal Act on Local-Self Government. Among them, it is worthy mention the letter e), establishing early termination “if the local representative fails to participate in assembly meetings continuously for a year from the date of the first meeting missed”.

176. No professional standards are required. However, representatives must participate in professional training organised by the Government Office within 3 months after taking his/her oath at the inaugural meeting, which is held within 15 days of the election.<sup>77</sup>

177. Local representatives are required to make a declaration of assets every year (Cardinal Act on Local Self-Government, Article 39). As long as they do not fulfil this obligation, they may not exercise the rights arising out of the office or receive any allowance from the local government.

178. Local representatives have the right to and are entitled to get involved in the work of the body of local representatives. During the session, a local representative may request information on local public affairs from the mayor (vice-mayor), the notary (town clerk), or from the head of the committee. The answer must be given orally during the session or in writing no later than fifteen days following the session. At his/her request, proposals are noted in the minutes; his/her oral remarks are included.

179. The local representative may attend any committee meeting and propose a debate on any question related to committee tasks to the committee chair. The debate based on the proposal made by the local representative is then submitted to the next session to which the local representative is invited. S/he may call for the revision of decisions on local municipal issues made by a committee, the mayor, the body of the local partial government, or by the body of the local minority government under delegated power. The administrative assistance required for his/her tasks is ensured by the Office of the body of representatives.

180. Therefore, the rapporteurs believe that Article 7.1 of the Charter is respected in Hungary.

##### 4.6.2 Article 7.2

181. Article 7, paragraph 2, refers to an appropriate financial compensation for elected representatives.

182. Local representatives are entitled to receive a salary and benefits in-kind (Cardinal Act on Local Self-Government, Article 35). Both can only be provided if the local government’s own-source revenues can cover them and the allocation does not endanger the performance of obligatory municipal tasks.<sup>78</sup> A local

77. These information are in Observatory on Local Autonomy, *Local Self-Government in Hungary*, September 2014, p. 21 ss., available at [http://www.ola-europe.eu/index.php?eID=tx\\_nawsecuredl&u=0&file=fileadmin/user\\_upload/ressources/monographie/mono\\_en/mono\\_hungary\\_en\\_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26](http://www.ola-europe.eu/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_hungary_en_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26)

78. Ibidem.

representative may only claim expenses related to his/her work as a local representative. There is a local government decree on the compensation (honorarium, benefits in kind) of representatives. The compensation of the mayor and deputy mayors is regulated by an act of parliament.

183. The remuneration and benefits in kind of the local representative who breaches his/her obligations may be reduced or withdrawn based on the decision of the body of representatives (Cardinal Act on Local Self-Government, Article 33).

184. Therefore, the rapporteurs consider that Article 7.2 of the Charter is respected in Hungary.

#### **4.6.3 Article 7.3**

185. As for Article 7, paragraph 3, according to which “Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles”, in Hungary the incompatibilities are determined by several legal provisions. One novelty of the 2011 reform has been the introduction of the incompatibility between mayors and members of the parliament.

186. According to the Cardinal Act on Local-Self Government, Articles 36 and 37, a strict regulation on the conflict of interest has been introduced. Article 36 lists several precise reasons for conflict of interest, that must be removed (according to Article 37) within thirty days after being elected or after the reason for incompatibility arises. If, after a waiver and the following delay, the local representative fails to remove the conflict of interest, the proceeding may bring to the termination of the mandate.

187. Therefore, the activity that are incompatible with the office can be considered determined by statute. The only concern is raised by the opening statement of Article 36.1, according to which “Local representatives shall not engage in any activity which threatens the public confidence that is necessary to perform his/her functions”. Rapporteurs believe that, in order to comply with Article 7.3 of the Charter, this provision has to be interpreted as specified by the following text of the paragraph in which it is included, i.e. not as a general open provision.

188. In the light of this interpretation, the rapporteurs are of the opinion that Article 7.3 of the Charter is respected in Hungary.

#### **4.7 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.

##### **4.7.1 Article 8.1**

189. Article 8 of the Charter deals with supervision of local authorities. According to Article 8, paragraph 1, any administrative supervision of the activities of local authorities must be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

190. In line with the requirements of the Charter, in Hungary the rules governing central control over local authorities and the powers of the central authorities concerned are determined by the Constitution and by the law.

191. Article 32 of the Fundamental Law establishes the rules on supervision on local government decree, which shall no conflict with any other law. Local governments shall send local government decrees to the capital or county government office immediately after their promulgation. If the capital or county government office finds the local government decree or any of its provisions to be in breach of any law, it may initiate a judicial review of the local government decree. The capital or county government office may apply to a court for the establishment of the omission of a local government of its obligation that is based on an Act to adopt

decrees or make decisions. Should the local government fail to comply with its obligation to adopt decrees or make decisions by the date determined by the court in its decision establishing omission, the court shall, at the initiative of the capital or county government office, order the head of the capital or county government office to adopt the local government decree or local government decision required to remedy the omission in the name of the local government.

192. The Cardinal Law on Local Self-Government in Article 132 further details those provisions (see above).

193. Therefore, the rapporteurs believe that Article 8.1 of the Charter is respected in Hungary.

#### **4.7.2 Article 8.2**

194. According to Article 8, paragraph 2, of the Charter, the supervision over local authorities can only aim at ensuring compliance with the law and constitutional principles. Expediency control can be used only in case of delegated tasks.

195. The 2013 report expresses some doubts about the lack of precision of Article 32.5 of the Fundamental Law, especially on the clear distinction should be established between, on the one hand, the local authorities' own competences and those delegated by the central government and, on the other hand, between the control of the local authorities' activities' legality and supervision of their decisions' expediency.<sup>79</sup>

196. The rapporteurs consider that those issues have been fixed by the legislation, which limits the State supervision to the legality control.

197. Therefore, Article 8.2 can be considered complied with in Hungary.

#### **4.7.3 Article 8.3**

198. Article 8, paragraph 3, deals with the way in which the supervision is exercised in practice, and requires compliance with the principle of proportionality.

199. Recommendation 341 (2013) asked the Hungarian government "limiting central government supervision of the management of local finance so that it is "proportionate" within the meaning of Article 8 of the Charter".<sup>80</sup>

200. The rapporteurs are fully aware of the importance of a proper financial management at local level and of the risk of a negative impact of local government debts on the general financial framework of the country. They also appreciate the introduction of an auditing approach and the activity developed by the State Audit Office. Nevertheless, they consider that the financial supervision is too pervasive, limiting the financial autonomy of local authorities beyond the proportionality principle.

201. In light of the preceding considerations, the requirements of Article 8.3 of the Charter are not complied with in Hungary.

### **4.8 Article 9 – Financial resources**

#### **Article 9 – Financial resources of local authorities**

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
- 4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

79. CG(25)7FINAL 31 October 2013, Local and regional democracy in Hungary, para. 149.

80. CG(25)7FINAL 31 October 2013, Local and regional democracy in Hungary, para. 149 and Recommendation 341 (2013), lett. c).

- 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.

#### 4.8.1 Article 9.1

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

203. In Hungary, local authorities manage a small part of financial resources, which account for up to 15.1% of public expenditures. Their revenues correspond to 10% of the GDP (2.3% of the tax revenues, 6.7% of grants and subsidies; 1% of other revenues).<sup>81</sup> The true question, however, is whether they are allowed to dispose freely of those resources and whether these are proportional to the level of local responsibilities.

204. It should also be mentioned that according to the OECD<sup>82</sup> in 2016 only 27.3% of total public investment was carried out by subnational governments in Hungary, compared to an OECD average of 56.9%. The share of public investment carried out by subnational governments in Hungary is among the lowest among OECD countries.

205. The issue was already raised in the 2013 monitoring report. Recommendation 341 (2013) asked the Hungarian government to “grant local authorities financial autonomy to enable them to exercise their powers properly, in particular by adjusting the level of grants allocated by the central government to local authorities so that their resources remain commensurate with their powers”.

206. Although the local finances improved as a consequence of the consolidation of the debts (operation which reduced the debt of the local authorities from 1 344 billion of HUF to 100 billion of HUF), the transfer of competencies from the subnational to the national level has gone hand in hand with an even stronger reduction in subnational governments’ revenue sources. As a result, the latter have fewer resources for the remaining tasks than before.<sup>83</sup> In addition, rapporteurs were informed that most small municipalities have to apply annually to the central government for covering their operating costs or getting some capital revenue.

207. Special attention deserves the so-called ‘solidarity contribution’, introduced in 2017.<sup>84</sup> This contribution is a new payment obligation on the municipalities with large local taxes incomes. The Act specifically exempted the capital city of Budapest from this obligation. The additional government revenue for the year 2017 was of HUF 21.3 billion. The contribution had a strong impact on the finances of the municipalities with important local taxes incomes. For example, the municipality of Budaörs, a small city situated next to Budapest, with a population of 30,000, had to pay a solidarity contribution of HUF 2.1 billion in 2017.

208. During the monitoring visit, the delegation was informed that the introduction of the solidarity contribution has resulted in a position whereby the State does not contribute to mandatory duties that are conducted by the richer municipalities, indeed, it deducts an important proportion of local own revenues.

81. Based on OECD Data: <http://www.oecd.org/regional/regional-policy/profile-Hungary.pdf>

82. <http://www.oecd.org/cfe/HUNGARY-Regions-and-Cities-2018.pdf>

83. [http://www.sqi-network.org/docs/2018/country/SGI2018\\_Hungary.pdf](http://www.sqi-network.org/docs/2018/country/SGI2018_Hungary.pdf)

84. Act XC of 2016 on the central budget of Hungary for 2017 (Annex 2. point V). The contribution has been reiterated in the following years: Act C of 2017 on the central budget of Hungary for 2018 (Annex 2. point V); Act L of 2018 on the central budget of Hungary for 2019 (Annex 2. point V).

209. In light of the preceding considerations, the requirements of Article 9.1 of the Charter are not complied with in Hungary.

#### **4.8.2 Article 9.2**

210. Another basic principle, established in Article 9, paragraph 2, requires that local authorities should have sufficient financial resources in proportion to the responsibilities assigned to them by law.

211. In Hungary, Article 34.1 of the Fundamental Law reproduces this principle, establishing that “For the performance of their mandatory functions and powers, local governments shall be entitled to proportionate budgetary and other financial support”.

212. Nevertheless, in practice, the delegation was informed that in many municipalities and counties the financial resources do not cover the expenditures for mandatory tasks. Also richer municipalities, as a consequence of the already mentioned ‘solidarity contribution’, find difficult to have sufficient financial resources.

213. Therefore, the requirements of Article 9.2 of the Charter are not complied with in Hungary.

#### **4.8.3 Article 9.3**

214. Article 9, paragraph 3, requires that at least part of the financial resources of local authorities must derive from local taxes of which, within the limits of statute, they have the power to determine the rate.

215. The main local taxes are the local business tax (representing the 74% of local taxes in 2013), the tourism tax, the municipal tax on individuals and businesses, the land tax and the building tax.

216. In Hungary, the financial resources deriving from “local taxes” represent a minimal part of the municipal incomes (22.5% according to the 2013 OECD data),<sup>85</sup> whereas counties do not have any real “local tax”.

217. Therefore, the requirements of Article 9.3 of the Charter are not complied with in Hungary.

#### **4.8.4 Article 9.4**

218. Article 9, paragraph 4, refers to the need for the resources available to local authorities to be of a sufficiently diversified and buoyant nature to enable them to keep up as far as practically possible with the actual changes (increases) in the costs for carrying out their tasks.

219. In Hungary, the main financial resources of local authorities are State grants and subsidies, making local authorities highly dependent on the State. The limited possibility of establishing local taxes makes it difficult to consider local resources as having a sufficiently diversified and expanding nature to enable them to keep up as far as practically possible with the actual changes (increases) in the costs for carrying out their tasks.

220. Therefore, the rapporteurs consider that Article 9, paragraph 4 of the Charter is not respected in Hungary.

#### **4.8.5 Article 9.5**

221. Article 9, paragraph 5, refers to the protection of financially weaker local authorities through equalisation procedures.

222. The existing equalisation mechanism (aimed at equalising only the mandatory tasks) is quite obscure. Those municipalities possessing low tax-income capacities (under 8,500 HUF) receive a supplement (with a supplement support of a certain percentage based on the amount of general supports), above this sum, the deduction takes place in single zones. The calculated income to be reduced is 0.55% of the tax base (previously 0.5%), in the case of local governments with very high tax income it might reach 0.65%.<sup>86</sup>

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85. <http://www.oecd.org/cfe/regional-policy/sngs-around-the-world.htm>

86. We quote E. STEINER, *Introduction to the Hungarian Local Government System*, 2016, available at [http://www.manorka.net/uploads/images/Kiadv%C3%A1nyok/Local%20Governments\\_boritoval.pdf](http://www.manorka.net/uploads/images/Kiadv%C3%A1nyok/Local%20Governments_boritoval.pdf)

223. During the monitoring visit the delegation heard many complaints, especially by representatives of villages, on the equalisation mechanism. It was pointed out that the mechanism does not take into account the real needs of local authorities and is insufficient. In particular, notwithstanding the equalisation, smaller municipalities cannot carry out their mandatory tasks. Other local government representatives complained that the mechanism lacks any objective basis to calculate the equalisation and that its effects are unpredictable, determining a high degree of uncertainty as for the local resources.

224. Therefore, the rapporteurs consider that Article 9, paragraph 5 of the Charter is only partially respected in Hungary.

#### **4.8.6 Article 9.6**

225. As for Article 9, paragraph 6, of the Charter, on consultation of local authorities on the way in which redistributed resources are allocated, this issue was addressed in Recommendation 341 (2013), together with the general issue of the lack of adequate consultation, that has been mentioned under Article 4.6. Things haven't changed in the recent years, as it is shown by the enactment of the 2017 budgetary law, which introduced the so-called 'solidarity contribution'.

226. Therefore, the requirements of Article 9.6 of the Charter are not complied with in Hungary.

#### **4.8.7 Article 9.7**

227. As for Article 9, paragraph 7 of the Charter, according to which "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", grants for specific projects do exist in Hungary. Part of local investment projects are also financed through EU structural funds and other financial instruments.

228. The delegation was informed of a multiplication of earmarked grants, among them the recent 'Hungarian villages program', aimed at reviving settlements found in underdeveloped areas, which is about to start in 2019.<sup>87</sup>

229. It was also mentioned, beginning from 2019, a special grant for improving the salaries of local government staff: local authorities that are qualified according to the law (taking into account several indicators) may apply.

230. Another important program is the Modern Cities Program, addressed to the 23 towns with county rights. The government's Modern Cities scheme, financed by EU funds, provided Hungarian towns with county status more than 150 billion HUF (465 million euros) for development projects in 2018. The delegation received different opinions on the Modern Cities Program. On one hand, the programme resulted in an increase of funds for the recipient municipalities, which were allowed to offer better services and improve the quality of urban spaces and buildings. On the other hand, the process for attributing the grants, based in an agreement between the municipality and the central government, signed by the Prime Minister and the Mayor, makes the grants rather discretionary. The delegation was told that municipalities and counties with an influential Fidesz leader have been in a better position to get additional funding<sup>88</sup>. Even without following this point of view, however there is a risk of a political exploitation of the government, also considering the media coverage devoted to this programme. Exactly for avoiding political manipulation and influence from central government, Article 9.7 of the Charter sets clear limits to earmarked grants.

231. Consequently, rapporteurs consider that the requirements of Article 9.7 of the Charter are not complied with in Hungary.

#### **4.8.8 Article 9.8**

232. Article 9, paragraph 8, refers to the access to the national capital market for the purpose of borrowing for capital investment.

87. <https://hungarytoday.hu/the-future-of-hungarian-villages-prospects-of-eco-villages/>

88. [http://www.sqi-network.org/docs/2018/country/SGI2018\\_Hungary.pdf](http://www.sqi-network.org/docs/2018/country/SGI2018_Hungary.pdf)

233. In Hungary, the permission of the government for local government borrowing was introduced by Article 34.5 of the Fundamental Law. Detailed rules are established by Act No. CXCV of 2011 on the economic stability of Hungary. All loans and other transactions with the nature of loan (for example, municipal bonds) must be authorised by the government. There are exceptions to this principle. For example, there is a *de minimis* rule, and illiquid loans do not need permission. Similarly, loans required for projects co-financed by the European Union and reorganisation credits linked to the municipal debt settlement process do not need the consent of the government.

234. The rapporteurs are aware of the impact of the local government debt on the public finances and of the importance of keeping a balanced budget. Nevertheless, they consider that a balance with the principle of local autonomy has always to be pursued. In Hungary, the financial freedom of local governments has been significantly limited by these regulations. Although a great number of other exceptions exist, the financial freedom of local governments remains significantly limited.

235. The rapporteurs consider that the requirements of Article 9.8 of the Charter are not fully complied with in Hungary.

#### 4.9 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.

##### 4.9.1 Article 10.1

236. Article 10 of the Charter covers the possibility of co-operation between local authorities and their right to associate, at both national and international level. Article 10, paragraph 1, refers to types of cooperation aimed at carrying out tasks of common interest.

237. Article 32.1, lett. k) of the Fundamental Law establishes that local governments may associate freely with other local governments, establish associations for the representation of their interests, cooperate with local governments of other countries within their functions and powers, and become members of international organisations of local governments.

238. The Cardinal Law on Local Self-Government, Article 87, states that representative bodies (councils) of municipalities may form inter-municipal associations with legal personality in order to more efficiently and appropriately perform one or more municipal tasks, or the delegated tasks of the mayor and the clerk. Associations are established by written agreement between the participating local governments, based on the decisions of the representative body, made by qualified majorities. The association can establish organisations governed by public law, companies, non-profit organisations, and other forms of organisations for the performance of public tasks.<sup>89</sup>

239. The central organ of the inter-municipal association is the council of the association, whose members are delegated by the representative bodies of the participating local governments. The members of the council have a vote that is defined by the agreement. The decisions of the councils are made in the form of a resolution, because associations do not have legislative powers.

240. Therefore, the rapporteurs believe that Article 10.1 of the Charter is fully respected in Hungary.

##### 4.9.2 Article 10.2

241. The second paragraph of Article 10 of the Charter is also respected in Hungary.

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89. Observatory on Local Autonomy, *Local Self-Government in Hungary*, September 2014, p. 35 ss., available at [http://www.ola-europe.eu/index.php?eID=tx\\_nawsecured1&u=0&file=fileadmin/user\\_upload/ressources/monographie/mono\\_en/mono\\_hungary\\_en\\_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26](http://www.ola-europe.eu/index.php?eID=tx_nawsecured1&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_hungary_en_2014.pdf&t=1559312599&hash=e32ff8bbf81babdd9fb3a3cb387afc26)

242. Advocacy associations of Hungarian local governments are regulated by the Cardinal Act on Local Self-Government in Article 131, as part of the relationship between national and local authorities. The main reason for this paradigm is that members of associations have initiative and advocacy tasks in the field of legislation on the structure of the local governments and local public services. These bodies are defined by the Act as the main consultation partners of the Government of Hungary; thus, these bodies are classified as special consultative organisations. The conditions for the formation of these associations are defined by the Act, and strict terms of representativeness are required.

243. Hungary has several associations of local authorities, even compared with countries with considerably larger populations and surface areas. These associations all have differing missions, and their members appear to be keen on maintaining this diversity of representation.

244. The seven local authority associations are as follows:

- National Interest Group of Small Town Local Governments (*Kisvárosi Önkormányzatok Országos Érdekszövetsége, KÖÖÉSZ*)
- National Local Government Federation of Villages, Smaller Municipalities and Micro-Regions (*Községek, Kistelepülések és Kistérségek Országos Önkormányzati Szövetsége, KÖSZ*)
- The Hungarian Village Federation (*Magyar Faluszövetség*)
- Alliance of Cities of County Rank (*Megyei Jogú Városok Szövetsége, MJVSZ*)
- National Alliance of County Governments (*Megyei Önkormányzatok Országos Szövetsége, MÖOSZ*)
- National Alliance of Municipal Governments (*Települési Önkormányzatok Országos Szövetsége, TÖOSZ*)
- National Alliance of Local Governments (*Magyar Önkormányzatok Szövetsége, MÖSZ*)

245. Therefore, the rapporteurs believe that Article 10.2 of the Charter is fully respected in Hungary.

#### **4.9.3 Article 10.3**

246. Article 10, paragraph 3, addresses the cooperation of local authorities with their counterparts in other States. The right to engage in cross-border cooperation is also protected.

247. Hungarian local authorities are entitled to co-operate with their counterparts in other States. Article 42.6 of the Cardinal Act on Local Self-Government considers the “agreement with foreign self-governments on cooperation, affiliation with and departure from international associations of self-governments” as a competence of local assembly, that cannot be delegated to other bodies.

248. This cooperation is well developed also in practice, as the delegation was told during the monitoring visit. Transfrontier cooperation projects exist between Hungarian counties and local authorities in Serbia and Romania.

249. It is also worth mentioning that Hungary has signed and ratified the European Outline Convention on Cross-border Co-operation between Territorial Communities or Authorities (CETS No.106).

250. Therefore, the rapporteurs believe that Article 10.3 of the Charter is fully respected in Hungary.

#### **4.10 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.

251. Article 11 of the Charter refers to an effective judicial remedy to ensure respect for local self-government.

252. In Hungary, as it was stated in the 2013 report, Article 5 of the Cardinal Act on Local Self-Government establishes that the lawful exercise of the constitutional powers of local authorities is protected by the Constitutional Court and ordinary courts.

253. Local authorities may apply directly to the Constitutional Court only in case of conflict with another authority concerning their respective responsibilities.<sup>90</sup> Apart from this, indirect access to Constitutional Court, via preliminary ruling, is allowed to local authorities.<sup>91</sup> As for the possibility of local authorities to lodge a direct complaint to the Constitutional Court, according to sections 26-31 of the Act on Constitutional Court, according to the case-law of the Constitutional Court it is limited to cases in which the local government acts as a private entity.<sup>92</sup> On the contrary, direct complaint is not allowed when the local authorities act as public powers.<sup>93</sup>

254. Article 16 of the Act provides for the possibility (on the part of local authorities) of appealing to the court against decisions which go against their interests in very specific cases (such as when the government takes away a development project which would have been of local interest for a municipality). This leads the rapporteurs to conclude that the right to lodge a complaint, when the interests of local authorities are – or risk to be – undermined, was very limited and that the legal protection of local self-government was not effective in the light of the relevant provision of the Charter. Recommendation 341 (2013) asked the Hungarian government to “revise the legislation in order to provide local authorities with an effective judicial remedy to secure the free exercise of their powers and guarantee the judicial protection of the good implementation of the basic principles of local self-government provided in the Charter ratified by Hungary”.

255. Since 2013, the concerns for the capture of the Constitutional Court by the government<sup>94</sup> and for the weakening of the independence of the judiciary have been growing, as pointed out by many resolutions and opinions adopted by the European institutions.<sup>95</sup> During the 2019 monitoring visit, although the legal protection was not the main concern of local authorities, some of the local representatives met by the delegation showed their reservations with regard to the possibility to have their local autonomy upheld by the courts, considering the general situation of the judiciary and of the rule of law in Hungary.

256. In light of the preceding considerations, the rapporteurs conclude that the requirements of Article 11 of the Charter are not complied with in Hungary.

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

257. As it was pointed out in the 2013 report,<sup>96</sup> Hungary has introduced an original system of representation of ethnic and linguistic minorities. Law LXXVII on the rights of national and ethnic minorities (also known as the law on minorities) was passed in 1993, revised by the Act No. CLXXIX of 2011 on the rights of national minorities. This law counts all the groups of people who have been living in Hungary for at least a century as national and ethnic minorities. The members of those groups are Hungarian citizens but they differ from the rest of the population through their language, culture and traditions and their desire to preserve them.

258. The groups regarded as minorities in Hungary under this law are, in alphabetical order, Armenians, Bulgarians, Croats, Germans, Greeks, Poles, Roma, Romanians, Ruthenians, Serbs, Slovaks, Slovenians and Ukrainians.

90. Act on Constitutional Court, Section 36: “(1) If – with the exception of courts and public administration authorities – a conflict of competence arises between state organs or between a state organ and local government organs, the organs in question may request the Constitutional Court to resolve the conflict of competence based on the interpretation of the Fundamental Law. (2) The Constitutional Court shall determine which organ has competence in the dispute and appoint the organ obliged to proceed”.

91. Act on Constitutional Court, Section 25,

92. Constitutional Court, decision 3149/2016. (VII. 22.) AB and decision 3158/2018. (V. 16.) AB.

93. Constitutional Court, decision 3077/2015. (IV. 23.) AB.

94. See, among others, G. HALMAL, *Dismantling Constitutional Review in Hungary*, in *Rivista di Diritti Comparati*, 2019, 1, p. 1 ss.

95. See European Parliament, Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL) P8\_TA(2018)0340 [http://www.europarl.europa.eu/doceo/document/A-8-2018-0250\\_EN.pdf](http://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.pdf); See Venice Commission, CDL-AD(2012)001, Opinion on Act CLXII of 2011 on the legal status and remuneration of judges and Act CLXI of 2011 on the organisation and administration of courts of Hungary; CDL-AD(2012)020, Opinion on the cardinal acts on the judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary; CDL-AD (2019) 004, Opinion on the law on administrative courts.

96. CG(25)7FINAL 31 October 2013, Local and regional democracy in Hungary, Appendix 1.

259. Article XXIX of the Fundamental Law states: “(1) Ethnic minorities living in Hungary shall be constituent parts of the State. Every Hungarian citizen belonging to a national or ethnic minority shall have the right to assume and preserve their identity. Ethnic minorities living in Hungary shall have the right to develop their own culture, use their native language, be educated in their native language and use their name in their own language. (2) Ethnic minorities living in Hungary may create local and national self-government bodies.”

260. The law on minorities entitles the thirteen national minorities to establish self-governing local authorities. These are elected bodies representing the interests of national or ethnic minorities at local or national level. Accordingly, these self-government bodies have special competences for fixing the calendar for their festivals and celebrations, fostering the preservation of their traditions and participating in public education. These special local authorities may manage public theatres, libraries and science and arts institutions, award study grants and provide services for their community (legal aid in particular).

261. At territorial level, these self-government bodies are to be found within both municipalities and cities or counties, and most of the minorities are present at these three levels in addition to the national level. Self-governing councils of different minorities are consulted on texts affecting their members, at both local and national level. They have a right of veto on cultural questions.

262. For a self-governing council to be formed at local level, it has to be requested by a sufficient number of people. Since that number is proportionate to the number of inhabitants in the municipality, thirty or so people may be enough in a small municipality.

263. During the monitoring visit, the delegation did not deal specifically with minorities self-government bodies. Difficulties related to discrimination against Roma minority, also by local authorities, and some forms of factual segregation of the Roma children in schools were presented by the Commissioner for Fundamental Rights.

## 6. CONCLUSIONS AND RECOMMENDATIONS

264. In Hungary, following the economic and financial crisis of 2008, the new Fundamental Law and the Cardinal Act of Local Self-Government approved by the ruling political majority represented a turning point in the history of the State’s organisation: it was pointed out that a new model of State emerged, a centralised State in which the separation of powers and the rule of law are weakened and most of the public powers are concentrated in the central Government.<sup>97</sup>

265. At other times, when the economic recession required the management of budgetary crises, the focus had shifted to the responsibility and cost-effectiveness of the central State. On this occasion, conversely, the answer to the crisis was framed within the traditional hierarchical approach to the exercise of State power: as a result, an important recentralisation process was implemented.

266. While the model was fundamentally transformed as a result of the aforementioned changes, several longstanding structural problems (e.g., a fragmented settlement structure comprising a large number of small settlements, a growing fragmentation of the capital city, and the absence of an authentic regional level of government), which had made the reform of the local government system a necessity for a long time<sup>98</sup> were left unaddressed.

267. The reform was not based on a systematic assessment of the advantages and disadvantages of the former practice of self-governments. The alternative options to a strongly centralised State were not seriously explored. Experimentation, model calculations, broad consultations, incremental implementation, and mechanisms for fine-tuning the reform were not considered.

268. Although mentioned in the preamble of the 2011 Cardinal Act on Local Self-Government, the European Charter of Local Self-Government, i.e. an international treaty ratified by Hungary, was not taken into

97. I. BALÁZS, *Des nouvelles tendances du concept de l'autonomie locale en Hongrie*, in *Mélange à l'honneur du Professeur Gérard Marcou*, 2017, IRJS Éditions, pp. 1-8.

98. I. PÁLNÉ KOVÁCS, Á. BODOR, I. FINTA, Z. GRÜNHUT, P. KACZIBA, G. ZONGOR, *Farewell to Decentralisation: The Hungarian Story and its General Implications*, in *Croatian and comparative public administration: a journal for theory and practice of public administration*, 2017, pp. 789-816, p. 800.

consideration in the drafting process and did not play any influence in the model of local administration introduced by the reform.

269. The 2013 monitoring report<sup>99</sup> expressed concerns over the strong recentralisation of powers and recommended that “the Hungarian authorities take steps to guarantee the implementation of the principle of self-government and the financial autonomy of local and regional authorities as set out in the Charter”. The rapporteurs deplore that the 2013 conclusions and recommendations have not been addressed by the Hungarian government and therefore must be reiterated.

270. In addition, during the 2019 monitoring visit, several years after the reform entered into force, the delegation has developed the impression that the quality of public services has not improved and that citizens are still not receiving improved services, even after the recentralisation. There is a lack of informed analysis and evaluation on the impact of the reform. An independent assessment on the real impact of nationalised public services and development policy would be of primary interest.

271. While measuring and evaluating the 2011 reform would prove beneficial in assessing its impact on public services and quality of life, it is already clear that the Charter is mostly not respected in Hungary, today as in 2013.

272. The rapporteurs consider the task of monitoring compliance with the Charter, that is, with a treaty entrenching international standards on local self-government, extremely challenging, in a broader context in which the degradation of the structures and substance of the constitutional democracy takes place gradually, through an accumulation of piecemeal changes, each one possibly harmless or even justified, if considered individually.

273. For this reason, although the report focuses on monitoring compliance with the Charter, the rapporteurs cannot avoid drawing attention to the impact that the democratic decay at national level is having on the local democracy, even beyond the aspects that have been expressly qualified as problematic in relation to the Charter.

274. The main elements of concern pointed out by the report are the following:

- a. the issues raised by Recommendation 341 (2013) have not been addressed;
- b. a true regional level of self-government does not exist in Hungary;
- c. the scope and competences of local government are very limited (Articles 3.1, 4.2);
- d. the subsidiarity principle is not respected (Article 4.3);
- e. the interferences by the State with the local functions undermine the assignment to local authorities of full and exclusive powers (Article 4.4);
- f. the functions delegated to local authorities are limited, as most of them have been reassigned to State deconcentrated administration (Article 4.5);
- g. a real and appropriate consultation mechanism has not been put in place (Articles 4.6, 9.6);
- h. local authorities cannot recruit high quality human resources (Article 6.2);
- i. the supervision of local authorities, carried out by government representatives, cannot be considered proportional to the relevance of the interests that it is intended to protect (Article 8.3);
- j. in spite of remarkable economic growth, the financial resources remain insufficient (Article 9.1,9.2);
- k. local taxes and charges whose rate can be determined by local authorities provide insufficient financial resources (Article 9.3, 9.4);
- l. the equalisation mechanism is rather obscure and limited (Article 9.5);

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99. [CG(25)7Final, 2013]

*m.* grants to local authorities are mostly earmarked for financing specific projects and are not assigned according to objective criteria (Article 9.7);

*n.* local authorities' level of trust in courts for the legal protection of their autonomy is reduced, thus restricting genuine enjoyment by local authorities of the right to recourse to a judicial remedy (Article 11).

275. The rapporteurs encourage Hungarian authorities to resume the path to decentralisation and local and regional democracy and reverse the trend towards the re-allocation to the State administration of local competences.

**APPENDIX – Programme of the Congress monitoring visit**

**CONGRESS MONITORING VISIT TO HUNGARY  
Budapest, Budaörs, Salgótarján, Rákócziánya  
(19-21 March 2019)**

**PROGRAMME**

**Congress delegation:**

**Rapporteurs:**

**Mr Marc COOLS**

Rapporteur on local democracy  
Member of the Monitoring Committee of the Congress  
President of the Independent Liberal and Democratic Group  
(ILDG<sup>100</sup>)  
Municipal Councillor, Uccle  
President of the Association of the City and Communes of the  
Brussels-Capital region

**Mr Jean-Pierre LIOUVILLE**

Rapporteur on regional democracy  
Chamber of regions (SOC)  
Member of the Monitoring Committee of the Congress  
Regional Councillor of the Grand Est Region (France)

**Expert:**

**Prof. Tania GROPPi**

Expert, Vice-chair of the Group of Independent Experts on the  
European Charter of Local Self-Government of the Congress  
(Italy)

**Congress Secretariat:**

**Ms Svitlana PEREVERTEN**

Co-Secretary to the Monitoring Committee of the Congress

The working languages, for which interpretation is provided during the meetings, will be Hungarian and French.

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100. EPP/CCE: European People's Party Group  
SOC : Socialist Group  
ILDG: Independent Liberal and Democratic Group  
ECR: European Conservatives and Reformists Group  
NR: Members not belonging to a political group of the Congress

**Tuesday 19 March 2019  
Budapest**

**HUNGARIAN NATIONAL DELEGATION TO THE CONGRESS, REPRESENTATIVES OF LOCAL AND REGIONAL ASSOCIATIONS, EXPERTS**

**Hungarian National Delegation to the Congress**

- **Mr Akos Istvan ACSAY**, Mayor of Notincs, Deputy-President of Association of Villages and Small Municipalities (KÖSZ)
- **Mr Jozsef PFEFFER**, Mayor of Bogad
- **Ms Anna MAGYAR**, Vice-president of the General Assembly of Csongrád County, Deputy Head of delegation
- **Mr Zsolt PAVA**, Mayor of Pecs (city with county rank)
- **Mr Imre SZIRBIK**, Member of the General Assembly of Csongrád County, Mayor of Szentés
- **Ms Zsófia HASSAY**, Mayor of the VI. District of Budapest

**Hungarian Village Association (MFSZ)**

- **Mr Gellért SZABÓ**, President

**Association of Hungarian Cities with County Rank (MJVSZ)**

- **Dr András CSER-PALKOVICS**, Co-President, Mayor of Székesfehérvár (city with county rank)
- **Ms Erika PAPP**, Secretary General
- **Ms Bettina PÁL**, Coordination and communication referent

**Hungarian Association of Municipalities (MÖSZ)**

- **Mr Béla ESZES**, Co-President, Mayor of Jánoshida

**National Association of Small Cities (KÖOSZ)**

- **Mr Sándor LIPŐK**, President, Mayor of Kemece

**Hungarian National Association of Local Authorities (TÖOSZ)**

- **Mr Jenő SCHMIDT**, President
- **Mr Dr Ferenc GYERGYÁK**, Secretary General
- **Ms Dr Erika STEINER**, Deputy Secretary General
- **Ms Katalin KOLIN-SABJÁN**, Secretary of International Affairs, Secretary of the Hungarian National Delegation to the Congress

**National Association of Counties (MÖOSZ)**

- **Mr József RIBÁNYI**, Co-President

**Independent expert**

- **Ms Ilona PALNE KOVACS**, member of the Group of Independent Experts of the Congress, Professor, University of Pécs

#### **CITY HALL OF BUDAPEST**

- **Mr Gábor BAGDY**, Deputy Mayor of Budapest
- **Ms Zsófia HASSAY**, Mayor of the VI. District of Budapest
- **Mr Péter SZEGVÁRI**, Chief Advisor to the Mayor of Budapest
- **Mr Árpád SZABÓ**, Advisor to the Deputy Mayor of Budapest
- **Ms Adrienn MAGYAR**, Head of Office of International Relations

#### **MINISTRY OF INTERIOR**

- **Dr Sándor PINTÉR**, Deputy Prime Minister, Minister
- **Mr Tibor POGÁCSÁS**, State Secretary for Local Government
- **Mr Miklós DUKAI**, Deputy State Secretary for Local Government
- **Mr Richárd LEYRER**, Head of the International Relations Department

#### **COMMISSIONER FOR FUNDAMENTAL RIGHTS**

- **Dr László SZÉKELY**, Commissioner for fundamental rights
- **Mr Miklós GARAMVÁRI**, Secretary General of the Office of the Commissioner
- **Ms Boglárka LÁSZLÓ**, Head of Department for International and Public Relations
- **Mr Zsolt KOVÁCS**, Head of Department for General Inquiries and National Minority Rights
- **Mr András MAGICZ**, Head of Department for Public Law
- **Ms Judit MENYHÁRT**, Deputy Head of Department for International and Public Relations
- **Mr Balázs KISS**, Chief legal expert

**Wednesday 20 March 2019**  
**Budapest, Budaörs**

#### **MINISTRY OF FINANCE**

- **Mr Péter BENŐ BANAI**, State Secretary for Budgetary Affairs
- **Mr Ábel BERCZIK**, Deputy State Secretary
- **Ms Éva MOLNÁR**, Head of unit, Department for Local Government's Budgetary Systems
- **Mr Ádám KECSKÉS**, Deputy Head of unit
- **Mr Gergely PERESZTEGI**, Senior expert

#### **CONSTITUTIONAL COURT**

- **Mr András Zs. VARGA**, Judge, member of the Venice Commission
- **Mr Marcel SZABÓ**, Judge

#### **STATE AUDIT OFFICE OF HUNGARY**

- **Mr Tihamér WARVASOVSKY**, Deputy President
- **Ms Magdolna HOLMAN**, Secretary General

#### **NATIONAL ASSEMBLY**

- **Mr Csaba HENDE**, Deputy Speaker and Chairman of the Legislation Committee

#### **BUDAÖRS**

- **Mr Tamás WITTINGHOFF**, Mayor

**Thursday 21 March 2019**  
**Salgótarján, Rákócziánya**

**NÓGRÁD COUNTY**

- **Mr Nándor SKUCZI**, President of the General Assembly of the County
- **Dr József BAGÓ**, Secretary General of the County Office

**SALGÓTARJÁN**

- **Mr Zsolt FEKETE**, Mayor
- **Mr Zoltán DÁNIEL**, Deputy Mayor

**RÁKÓCZIBÁNYA**

- **Mr Jakab GÁBOR**, Mayor