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Local and regional democracy in Croatia

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Introduction

1. According to Article 2.3 of Statutory Resolution (2000) 1 of the Committee of Ministers of Council of Europe, the Congress shall prepare monitoring reports on the situation of local and/or regional democracy in the member states and in states which have applied for membership, on a regular basis.¹
2. The state of local and regional democracy in Croatia has already been the object of a report, Resolution (67) and Recommendation (46) adopted by the Congress in 1998.² The decision to prepare a second monitoring report on regional democracy in Croatia was taken by the Institutional Committee of the Congress on 16 October 2006 with a view to Croatia's possible accession to the European Union.
3. Karsten BEHR (Germany, EPP/CD, R) was appointed as Rapporteur for regional democracy in Croatia while Cees BIJL (The Netherlands, SOC, L) was appointed as Rapporteur for local democracy.
4. In carrying out their task, the Rapporteurs were assisted by Prof. Chris HIMSWORTH, consultant (UK), Vice-Chairman of the Group of Independent Experts on the European Charter of Local Self-Government, and Almut SCHROEDER and Lilit NIKOGHOSYAN (Secretariat of the Congress).
5. During the visits, the Congress monitoring delegation met a number of representatives of the Croatian authorities at local, regional and central level (Government and Parliament), the judiciary (Constitutional Court), the national associations of the local and regional self-governments as well as experts and representatives of non-governmental organisations and of the international community in Croatia (for detailed programmes of the two visits see the appendices).
6. This report was prepared on the basis of the information received during the two on-site visits to Croatia as well as on extracts from the relevant legislation and other information and documents provided by the representatives of the Croatian authorities, international organisations and experts.³
7. The Rapporteurs wish to thank all those they met in Zagreb and elsewhere in Croatia and others who supplied information essential to the preparation of this report. These include representatives of the City of Zagreb, the Ministry of Finance, the Constitutional Court of Croatia, the Central State Office for Administration, the Associations of towns, municipalities and counties, members of the Croatian Parliament, members of the Decentralisation Commission, representatives of the Ministry for Sea, Tourism, Transport and Development, representatives of several local authorities as well as Europa House in Vukovar. Thanks for providing crucial information and commenting on the drafts of the report are also due to Professor Ivan Kopric and Professor Zvonimir Lauc (member of the Group of Independent Experts on the European Charter of Local Self-Government), as well as to Mr. Marko Kovacic, local government policy adviser, EU CARDS project.

Background

8. The modern state of Croatia dates from its formal declaration of independence from the then federal state of Yugoslavia on 25 June 1991⁴ and, although many continuing features of the law, politics and economy of Croatia are influenced by the heritage of the former Yugoslavia and indeed by earlier stages of Balkan history, this report can focus on the post-Independence period. The independence Constitution of 1990⁵ established the Republic of Croatia as a "unitary and indivisible democratic and social state". Initially, the Croatian Parliament (Sabor) was a bicameral institution (including a second House of Regional Representatives) but the second house was abolished by constitutional

¹ The Republic of Croatia joined the Council of Europe on 6 November 1996. It ratified the European Charter of Local Self-Government (hereinafter "the Charter") which came into force in respect of Croatia on 1 February 1998. It is represented in the Council of Europe's Congress of Local and Regional Authorities of Europe with five seats: three in the Chamber of Local Authorities and two in the Chamber of Regions.

² Resolution 67 (1998), Recommendation 46 (1998) and Explanatory Memorandum CG (5)4 Part II; earlier Congress reports: monitoring reports of 24 May 1994 CPL/BUR (2)36 rev and of 16 April 1996 CG/BUR (2)101 rev.

³ As to other literature in English on Croatian local and regional self-government, we gathered much assistance from I Koprić, *Legislative Frameworks for Decentralisation in Croatia* (Zagreb, 2003) as well as publications by the Congress of Local and Regional Authorities of Europe, the Council of Europe, The European Union, the OECD and some others.

⁴ Affirmed by the Parliament on 8 October.

⁵ Amended in relation to local and regional self-government in ways mentioned below.

amendments of 2001.⁶ On the other hand the Parliament's Committee for Local and Regional Self-Government plays a potentially important role in relation to law and policy in the sector.⁷ The provisions of the present Constitution which relate to local and regional self-government as well as other relevant provisions (including those relating to the Constitutional Court) are discussed below.

9. The government of the Croatian Republic is parliamentary in style. The second section of Part 1 of the Constitution provides for the presidency and the third section for the government, headed by the Prime Minister, responsible to the Parliament. The structure of government has been adjusted from time to time since independence but it currently consists of 13 Ministries, supplemented by 9 State Ministerial/Administrative Organisations and 4 Central State Offices. Important for present purposes is the Central State Office for Public Administration, headed by a State Secretary directly responsible to the Prime Minister, which includes within its (very broad) remit responsibility for local and regional self-government. In turn, this includes the task of administrative supervision of local and regional units but also responsibility for general policy and legislative initiative in this field. Sectoral central government responsibilities lie with the relevant ministries but central government administration is, in large measure, deconcentrated to offices and branch offices situated in the 20 counties (plus the City of Zagreb) and about 90 larger towns.

10. This report has been prepared in the closing months of the government whose term of office will end at the time of the parliamentary elections to be held in November 2007. The present government, a coalition headed by the Croatian Democratic Union (HDZ), came into office in 2003 when it displaced a government headed by the Social Democratic Party. One initiative of the HDZ government in 2004 was to establish a Decentralisation Commission whose membership consists of senior representatives of central government (11) joined by representatives of local and regional self-government (4). The Commission is a technical and consultative body with the task of setting the broad guidelines and principles for the decentralisation in Croatia and is the relevant linking institution for *inter alia* the (EU) CARDS projects relating to local and regional self-government (i.e. on fiscal decentralisation and capacity strengthening). Doubts have, however, been expressed to us about whether the Commission has yet fulfilled expectations as a strategic overseer of the decentralisation process and we would strongly recommend that it be revitalised as a dynamic and leading institution. Its membership, remit and available resources should be reorganised.

11. The general economic position of Croatia may be summarised by reference to its current (2005) GDP of 31,000m euros (per capita c 7000).⁸ Its economy is growing⁹ and, most importantly for both its economic and political condition, Croatia is now a candidate country for admission to the European Union. It should also be added, however, that the catastrophic early conditions of Croatia in the period immediately after independence continue to cast a long shadow. The wars of 1992-95 (sometimes the "wars of Yugoslavian succession," the "war of Croatian independence") had a profoundly destructive effect on the lives and property of the people of Croatia, especially in the regions of Slavonia and of Knin. The consequences for Croatia in general and for local and regional self-government in particular were noted *inter alia* in the Congress report and Recommendation of 1998 and, although some of the very specific impacts on the administration of the affected areas have since lifted (with the official return of the affected territories to Croatian administration), the enduring effects are substantial. At the level of both national and local and regional representation, the implementation of provisions to protect minorities is affected by the recent war conditions and the wounds they have left; the destruction of both residential and commercial property has affected the rehabilitation of communities; and the economic development of affected areas has been substantially hindered. This, along with the negative aspects of the collapse of the former Yugoslav state and other factors which have left some mountainous and island areas behind in the general progress towards development, produces very uneven conditions to which the general rules and institutions of local and regional self-government apply. These governmental institutions can be only a part of the answer to broader questions of how regional development in Croatia can be achieved.

12. The next section of this report (Part I) contains a general description of the territorial and administrative organisation of Croatia, including reference to the principal constitutional and legislative

⁶ The abolition of the House of Regional (County) Representatives was undertaken as part of a broader streamlining of institutions designed to increase the strength of Parliament and especially the other House.

⁷ A role, however, which has been somewhat curtailed in practice by the frequent use, in the legislative process, of abbreviated (urgent) procedures.

⁸ EC Commission, Croatia 2006 Progress Report, COM (2006) 649.

⁹ *Ibid.*

provisions. Part II contains analysis of the state of local and regional democracy, principally by reference to the standards of the European Charter of 1985. Part III contains a description of certain reforms of the Croatian system which are already planned and in the pipe-line. Finally, some Conclusions are added in Part IV.

Part I: The territorial and administrative organisation of Croatia

A. General comments

13. As mentioned, the Constitution describes Croatia as a “unitary and indivisible democratic and social state.” Although the state is unitary, the Constitution declares (Art. 4) that “government shall be organised on the principle of separation of powers into the legislative, executive and judicial branches, but limited by the right to local and regional self-government and then (Art 132) that “citizens shall be guaranteed the right to local and regional self-government”.¹⁰ The right is to be realised through local and regional representative bodies elected in free elections and citizens are also stated to be able to “directly participate in administering local affairs, through meetings, referenda and other forms of direct decision-making, in conformity with law and statute”.

14. It is then provided (Art 133) that municipalities and towns are to be the units of local self-government and that counties shall be units of regional self-government. In addition, the responsibilities of both tiers of self-government are stipulated with both a helpful generality of provision and then with quite a high degree of particularity (Art 134). Thus the units of local self-government (municipalities and towns) are “to carry out the affairs of local jurisdiction by which the needs of citizens are directly fulfilled, and in particular the affairs related to the organisation of localities and housing, area and urban planning, public utilities, child care, social welfare, primary health services, education and elementary schools, culture, physical education and sports, customer protection, protection and improvement of the environment, fire protection and civil defence”. Then the units of regional self-government (counties) are “to carry out the affairs of regional significance, and in particular the affairs related to education, health service, area and urban planning, economic development, traffic and traffic infrastructure and the development of networks of educational, health, social and cultural institutions”. It is also stated that (1) “affairs of local and regional jurisdictions shall be regulated by law”. In the allocation of affairs priority shall be given to the bodies which are closest to the citizen; and that (2) “in the determination of the local and regional self-government jurisdiction, the scope and nature of affairs and the requirements of efficiency and economy shall be taken into account”.

15. Other constitutional provisions protect the right of units of local and regional self-government to regulate autonomously by their statutes their internal organisation (Art 135) and declare that, in performing their functions, units are autonomous and are subject to review by governmental bodies only in respect of constitutionality and legality (Art 136). As to finance, the Constitution guarantees the right of units to their own revenues and the right to disposal freely of them (Art 137). Revenues must be proportional and the state is obliged to assist the financially weaker units.

16. As the Constitution made clear, the “affairs” of local and regional units are to be “regulated by law” and the mechanisms for achieving this currently are by (1) the Local and Territorial (Regional) Self-Government Act 2001 (as amended, in particular, by the Act on Amendments to the Local and Territorial (Regional) Self-Government Act 2005) together with other general legislation such as the Act defining territories (below paragraph 18) and the Law on the Financing of Local and Regional Self-Government Units 1993 (as since heavily amended); (2) certain more specific pieces of legislation such as the Law on the City of Zagreb 2001; and (3) sectoral laws relating to the different functions of the local and regional units.¹¹

17. Not all of these can be fully explored here, but, in summary, this body of legislation defines the numbers, names and territories of the two classes of unit defined by the Constitution (as well as providing for the special case of the City of Zagreb); makes additional provision regulating the

¹⁰ This article was inserted in the constitutional revision of 2001. The consequences of conferring this specific “right” of citizens rather than recognising the “principle of local self-government” as required by the Charter are touched on later in relation to the legal protection of self-government in paragraph 62 below.

¹¹ The extent of the range of such sectoral laws is well illustrated in H Masarić and V Ljubanović, ‘Self-Government Functions of Local Units (the Town of Opatija)’ in I Koprić, *Legislative Frameworks* above.

competences of authorities; and makes financial provision for local and regional units as well as provision for their supervision.

18. As to the definition of units and their territories, this dates back to the Territories (Counties, Towns and Municipalities) of Croatia Act 1992 (as amended) which (together with the 2001 Act) provides for the creation of the 429 municipalities and 126 towns currently operating at the level of local self-government. The difference between these two categories is largely terminological rather than one of substance. A town is simply a local unit where the seat of a county is located and/or a place with more than 10,000 inhabitants or, exceptionally, a place of special historical or other significance. In addition, however, the category of "large town" has recently been created as a vehicle for conferring a wider range of competences on these larger entities. In the meantime, it should be noted that other towns and municipalities vary greatly in size. In particular, there are many (57) towns with a population lower than 10,000 and there are 28 municipalities with populations of under 1000 - the smallest municipality has fewer than 200 inhabitants. 419 municipalities have a population of under 10,000.

19. At the regional level, there are 20 counties to which may be added the City of Zagreb which operates as a combination of a municipality and county. The City also has a wide range of state administrative tasks delegated to it.

B. Functions

20. As we have seen, an outline allocation of functions is provided by the Constitution itself, but this is supplemented by the 2001 Act (as amended by the 2005 Act) and then further regulated by the sectoral laws. In consequence, the competences of all municipalities and towns (including the "large towns" and the City of Zagreb) "carry out activities of local importance by which they directly meet the needs of the local population, and which are not assigned by the Constitution or the law to state bodies" and in particular activities relating to:

- the development of settlements and housing
- physical and urban planning
- utility services
- child protection
- social welfare
- primary health care
- child day care and elementary education
- culture, physical culture and sport
- consumer protection
- protection and development of the natural environment
- fire prevention and civil protection
- transport in their respective areas
- and such other activities as are prescribed by special laws

21. It is added that: The special laws regulating the individual activities in paragraph 1 of this Article shall define the activities which municipalities and towns are bound to organise and the activities which they may carry out.

22. Then the "large towns" which have been defined to number 16 (*together with* all towns which are county seats i.e. 32 - altogether) are, in addition, given responsibility for activities, in particular, in relation to:

- the development of settlements and housing
- physical and urban planning
- utility services
- child protection
- social welfare
- primary health care
- education
- culture, physical culture and sport
- consumer protection
- protection and development of the natural environment

- fire prevention and civil protection
- transport in their respective areas
- the maintenance of public roads
- the issuing of building and location permits, other construction-related documents, and implementation of physical planning documents
- and such other activities as are prescribed by special laws

23. Again, it is further provided that: The special laws regulating the individual activities in paragraph 1 of this Article shall define the activities which large towns are bound to organise and the activities which they may carry out.

24. In the case of counties, they are to carry out activities of regional importance, particularly those relating to:

- education
- health
- physical and urban planning
- economic development
- traffic and traffic infrastructure
- the maintenance of public roads
- the planning and development of networks of educational, health, social and cultural institutions
- the issuing of building and location permits, other construction-related documents, and implementation of physical planning documents for the territory of the county other than the territory of a large town
- and such other activities as are prescribed by special laws

25. And similar provision is again made inviting the need for “special laws” to define these activities.

26. And, finally in this section on the competences of the different classes of unit, it is also provided that the “large towns” *may*, as well as undertaking the activities already defined, carry out activities within the scope of counties.

27. A number of comments and criticisms will be elaborated below (paragraph 41 et seq.) in relation to these lists of functions, their interrelationships and some apparent gaps and omissions.

C. Internal Organisation

28. Local and regional authorities in Croatia are currently organised internally on the basis of a directly elected deliberative/representative body. - elected on a proportional list system - and an executive body headed by the mayor (“prefect” at the county level¹²) elected by the representative body.¹³ The Act provides that members of an executive body are to be elected “as a rule” from amongst the membership of the representative body. In many cases, however, members are not drawn from representative bodies.

29. Under the Constitutional Act on the Rights of National Minorities 2002 special provision is made for additional representation on local representative bodies if a national minority has a minimum share of 5% of inhabitants. If the share is 5-15%, there must be at least one representative, thereafter a proportional share. National minority representation is also required on executive bodies.¹⁴

30. We have been pleased to note that, in part because of the influence of CARDS projects, provision has been made through both university courses and the local and regional government academies for the education and training of personnel in the service of local and regional self-government. We would strongly recommend the extension of this provision.

¹² But these prefects are no longer treated as more regional agents of central government. Nor does their appointment any longer require central approval. For these reasons, the term “governor” is sometimes preferred but “prefect” has been retained in this report.

¹³ Currently, there are proposals in the form of a draft law to move to a system of directly elected mayors. This is discussed below at paragraph 66.

¹⁴ See also paragraph 66 below for proposals for minority deputy mayors.

D. Finance

31. The local and regional authorities of Croatia have a number of sources of revenue available to them. They include shares of income tax (levied by the Government but entirely allocated, in different ways, to local and regional governments); locally raised taxes; grants from the government and, in the case of towns and municipalities, from counties; locally raised administrative charges and income from property; and moneys raised by borrowing.

32. All revenue raised in income tax is attributed to local and regional self-government. Of the income tax raised in an area 52% is allocated directly to the municipality or town and 15% to the county. A further 12% is also distributed to counties and to "large towns" and municipalities for the funding of certain specific "decentralised" services - health, education, social welfare and fire-fighting. Finally, the remaining 21% is used as an equalisation in relation to the decentralised services and it is distributed to the local and regional authorities unable to provide the minimum prescribed standards of service from their initial (12%) allocation. The equalisation fund is planned as an item in the State budget for use for these purposes. Local and regional authorities also receive grants from the State budget according to criteria (including fiscal capacity, density of population and capital investment) provided for in the State Budget Law. A part of the grant is distributed directly to counties, large towns and municipalities. A part (75%) of grants given to the counties is for distribution to the municipalities and large towns in their areas, according to criteria developed by county assemblies, with preference given to island areas and to areas affected by war damage or by severe economic underdevelopment.¹⁵

33. The availability of locally raised taxes varies greatly from area to area but, in principle, counties have a range of sources including gambling taxes, boat taxes, motor vehicle taxes and death/gift taxes. A principal local tax available to towns and municipalities is the surtax on income tax (with different maximum levels prescribed for different sizes of authority) and, at least notionally, there are taxes on (drinks) consumption in catering establishments, taxes on the use of public areas and some others.¹⁶ The availability to local and regional authorities of income from administrative charges (for the issue of licences etc) varies very greatly across the country, as does the capacity of authorities to supplement their income by the commercial exploitation of their own property. Subject to overall financial limitations and subject also to the approval of the Government, local and regional authorities are permitted to take out (bank) loans for the funding of capital projects.

E. Supervision

34. Part X of the Act of 2001 (as amended in 2005) makes provision for the state supervision of local and regional self-government. Art 78 refers to the need to uphold the constitution and the law as well as to protect the rights of citizens. The supervision of the legality of the general acts of the representative bodies of all authorities is carried out by the offices of state administration in counties and (directly or by review of the county-level authority, as appropriate) by the Central State Office for Public Administration. There is provision too for the review of the constitutionality and legality of a general act (Art 82a).¹⁷ In the case of functions transferred from state administration to local and regional authorities, the Government supervises more directly on the basis of the instructions actually issued (Art 83). Under the rubric of "dissolution of representative bodies and protection of the right to local regional self-government", there is provision for the government to dissolve an authority's representative body on eight different grounds including the frequent passing of general acts in violation of the constitution or law (art 84) and then for the appointment of a commissioner - whose job it is to "ensure the realisation of the rights and responsibilities of citizens and legal persons in the unit of local or regional self-government" (art 86).

¹⁵ Municipalities and towns also have access to a share of the real estate turnover tax.

¹⁶ Certain taxes on vacant/unused land and premises were recently declared unconstitutional by the Constitutional Court.

¹⁷ And see below paragraph 66.

Part II: The state of local and regional democracy by reference to the European Charter of Local Self-Government

A. General

35. It is at this stage of our report that we turn from a description of local and regional self-government to an evaluation of both law and practice in the light of our assessment of the laws themselves (bearing in mind comments made to us during our visits to Croatia) as well as our assessment of how things appear to be actually working on the ground. We try to take account, where necessary, of the effect (both legal and practical) of recently adopted changes in the law. On the other hand, current proposals for change, even if already at the stage of the parliamentary process, are deferred until Part III below.

36. In this part of the report, the bench-mark standards are those provided by the text of the European Charter of Local Self-Government. The Charter applies directly to the local level of self-government and *ceteris paribus* we are also able to draw upon the standards it lays down when considering the regional level. To all intents and purposes, it is the same principles and indeed the same criteria of democratically based autonomy which apply at both levels. Of course, however, we have to be selective in our application of the Charter. We shall not consider, or we shall consider only very briefly, the Charter rules where we believe there is little or no compliance problem in Croatia but treat at greater length the areas which we believe to be more problematic.

37. Before we move on to more substantive matters, however, we should return briefly to the formal question of accession to the Charter. As earlier mentioned, when Croatia ratified the Charter of Local Self-Government with effect from 19 September 1997, it used the facility offered by Art 12 to accept only a minimum range of substantive articles and, therefore, omitted adherence to a number of important obligations. This was something which attracted expressions of criticism and regret in Congress Recommendation 46 (1998) paragraphs 6.2-6.4. The Recommendation called upon Croatia to extend the scope of applicability of the Charter as rapidly as possible. This has not, however, been done.

38. In some respects, such an extension may be viewed as a mere formality. Despite the current restrictions on Croatia's express undertakings under the Charter, *all* provisions in the Charter may be regarded as binding as general principles of European Law. It is also, in any event, the case that the Constitution and laws of Croatia do enable the country to be formally in compliance with the omitted provisions and this was the view expressed to us by representatives of the Central State Office for Public Administration. They nevertheless undertook to initiate, within Government, the process which would lead to a full adherence to the terms of the Charter.

39. We would very strongly recommend that this be done and that the 1998 Congress recommendation be implemented without delay.

B. Territorial Organisation

40. As mentioned above, the territorial organisation of local and regional government dates back to an Act of 1992. The arrangements then made have, however, been frequently adjusted since then – in particular to create new municipalities. Our impression is that this is a process which has been somewhat haphazard, unsystematic and subject to political pressures. There is, we believe, no enthusiasm for a general territorial reorganisation in Croatia but we would caution against the tendency to merely incremental change. It would be much better to undertake a general and more systematic review of boundaries and we would recommend such a review as a possible solution to the problem of the ineffective tiny municipalities which we mention at a number of points in this report. If broader reform were contemplated, we would also recommend that the position of the City of Zagreb be addressed in particular. It is a city of expanding population which is underrepresented by a single authority. There would be a strong case for establishing a second (lower) tier of local authorities within the capital and we would accordingly recommend that this be considered. It would have the added advantage of securing distinctive levels of both local and regional self-government for the capital.

C. The Competences of the Local and Regional Authorities

41. In the Preamble to the Charter, it is made clear that the principles of local (and, for our purposes, regional) self-government are to be realised not only through the creation of democratically based and autonomous institutions but also by ensuring that they have real responsibilities to discharge. Thus, by Art 3 of the Charter, authorities must have the right and ability “to regulate and manage a *substantial share* of public affairs” and, by Art 4, “the powers given to local authorities shall normally be full and exclusive”. It is a necessary precondition of the successful grant of powers to authorities that this be done clearly and without ambiguity and we are reminded that the Congress report and Recommendation of 1998 were critical of the state of affairs that the rapporteurs found at that time.

42. Since then, conditions have, of course, changed and the 2001 Act (as since amended) has replaced the earlier legislation. We are, however, concerned that some problems remain.

43. On the face of it, the Constitution and the 2001 Act as amended, appear to provide a substantial framework of competences but we believe that there are three types of problem which arise: (I) problems of incomplete implementation; (II) problems of imprecise allocation, and (III) problems in the allocation of functions without sufficient regard to the variations in the size of authority within categories, and particularly in relation to very small authorities. Taking these in turn:

I. Incomplete implementation

44. One specific problem of incomplete implementation arises in relation to the new range of competences supposed to have been allocated to the large towns by the 2005 Act. New powers were listed as in paragraph 22 above but, as the Act appears to imply, the further use of what the Act calls either special laws or bylaws (but may rather be simply amendments by new legislation to existing sectoral laws) is first necessary. The amendments made by the 2005 Act are, in their English translation, unclear. “Special laws” may, apparently, be used to extend the new lists of activities to yet further activities. “Special laws” are also, however, anticipated as necessary to define activities which municipalities/towns/large towns/counties either *must* or *may* carry out. We understand that amendments to some 35 sectoral laws will be required to achieve the necessary specification of functions but, despite the passage of time since 2005, few steps to implement the reforms have been undertaken. An exception has been the recent (13 July 2007) passing of the Physical Planning and Construction Act 2007. This decentralises (with effect from 1 January 2008) the issue of building permits.

45. We very strongly recommend that, in order to secure the competences of authorities at all levels in the system, the Government takes immediate steps, whether by further legislation or otherwise, to complete these processes of implementation of the framework law.

II. Imprecision and uncertainty

46. There are other problems with the lists of powers:

(a) There appear to be doubts about the constitutionality of some of the new allocations of powers because of the legislative manner of their allocation. These doubts derive from the failure in all instances to use the “organic law” procedure, as prescribed (but perhaps with insufficient precision) by Art 82(2) of the Constitution and because of the importance of this issue, we would recommend that the Government be asked to investigate and report.

(b) There are apparently many overlapping areas in the lists of powers. “Education” appears, for instance, as both a large town and county responsibility. “Education” could include “elementary education” but that is also allocated to municipalities and towns. In the case of certain functions (but not education) overlap is specifically excluded. In the county lists, building permits and other functions are stated to apply *except* in the territories of large towns. Other county functions are *not* narrowed in that way. There are many examples of apparent overlaps. There is nothing, on the face of the legislation, to provide a guarantee that a certain range of functions representing a substantial share of public affairs is being discharged at the local level, although we do understand and accept that, provided sectoral laws make the position clear, that a range of competences in the same field may be distributed across authorities at different levels. For instance, physical and urban planning may quite

naturally be divided between tiers of government, with each tier responsible for its own level in the process.

47. We are, however, concerned about three principal issues relating to these overlapping powers:

(a) Related to the issue of “incomplete implementation” in paragraph 44 above, we recommend that, whether by further sectoral legislation or otherwise, the apparent sharing or concurrency of functions is excluded and that the competences of each level of government are clearly defined in such a way as to allocate a “substantial share” to both regional and local authorities. As the CARDS policy guidance paper on the education sector¹⁸ proposed, the use of concurrent functions should be avoided.

(b) We have also been advised, however, that, in some instances, the exercise of related functions by the state, counties and municipalities (e.g. urban planning) can give rise to situations in which the state or counties (as regional authorities) may dictate outcomes to municipalities (as local authorities). In principle, the retention of inessential forms of control by higher-level authorities is both anti-democratic and a denial of autonomy but also paralytically inefficient where the need for higher permission may be the cause of acute delays. We have also heard of examples of the uncoordinated failure of related functions at different levels – for instance, where a municipal power to regulate traffic is not accompanied by the availability of police support to enforce the regulations. It should be acknowledged that the Constitutional provisions as well as specific statutory provisions (such as the Physical Planning Act 1994 as amended and the new Physical Planning and Construction Act 2007) do, in principle, seek to establish separate powers for each level of government.¹⁹ We must, however, make the general recommendation that the clarification of allocation of powers mentioned above does leave room for the autonomous exercise of power by the municipalities.

(c) We have also been told directly about county authorities “helping” municipalities in their areas in situations where the municipalities are too badly under-resourced to carry out the functions themselves. The prefect may give discretionary grants to assist municipalities in difficulties. This *may* be interpreted as a form of benign co-ordination of service delivery within counties but it is also a sign that some smaller municipalities, although quite powerful on paper, are unable to deliver local self-government in their areas. Where municipalities have populations of only a few hundred, the real exercise of autonomous powers is not possible. We recommend that steps be taken to overcome these weaknesses. (See also paragraphs 48 and 55 below.)

III. The size range of municipalities and especially the question of small municipalities.

48. Whilst we are concerned that certain municipalities, despite the formal allocation to responsibilities to them, may not in practice be discharging very many responsibilities on a full and exclusive basis, we are also concerned that, if in fact allocated, many functions would be unrealistically onerous for the tinier municipalities. It is understood that the smallest municipality in the country has a population of about 137 inhabitants. It is just about unbelievable, that in the areas of the smallest authorities, genuine local self-government is being implemented, - a criticism that has been levelled at the Croatian system of local self-government since the great expansion of the numbers of municipalities and towns in the early 1990s. A possible, partial solution to the problem would be by formal co-operation between authorities and this is discussed below (paragraph 55) with an accompanying recommendation.

49. At this point, we would also reinforce the recommendation in paragraph 48 above.

¹⁸ December 2006, paragraph 4.

¹⁹ But, in the physical planning sector, certain central and regional controls have been retained in relation to the adoption of physical plans and also in relation to national parks and nature parks.

D. Rights to be consulted

50. The Charter of Local Self-Government requires (Art 4.6) 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”. And, in relation to their finances, “local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them” (Art 9(6)). In seeking to apply these principles to Croatia, we believe that the existing legal provision could be strengthened. We received different views on the degree of consultation carried out by central government (mainly, but not exclusively, the Central State Office for Public Administration). It may be that on most occasions and in relation to most issues and most local and regional authorities, the degree of consultation with such authorities is, in practice, sufficient but there were also complaints of non-consultation – both of a systematic nature and in relation to specific issues. An example of the latter category was apparently the failure to consult on the creation of the three “statistical regions (for EU purposes). There are, in any event, many advantages to be gained from formally embedding good practice in the law - as recently encouraged by the recent Congress Recommendation 171(2005) on consultation of local authorities. There it was clearly recommended that local authorities’ rights of consultation should be enshrined in law. We would strongly recommend that general legal provision for consultation be incorporated into the law of Croatia. It is insufficient to rely on the fickleness of informal contact.

E. Financial Arrangements

51. Art 9 on the financial resources of local authorities contains some of the European Charter’s most comprehensive and detailed provisions. Resources must be adequate and commensurate with responsibilities; they must be available to be disposed of freely; part should derive from local sources locally controlled; central grants should be general rather than ear-marked; there should be a degree of equalisation, and there should be appropriate consultation with local authorities on the redistribution of resources. We are aware that Congress Recommendation 46 of 1998 expressed concerns about the inadequacy of resources available to local and regional authorities at that time and urged the need for improvement. We are also aware that much has changed in the intervening period. On the other hand, we are also aware that, as evidenced in particular by the current CARDS programme on fiscal decentralisation, there are continuing concerns about the arrangements for the financing of local and regional self-government and that further reforms are required.

52. Overall, we have five principal concerns about the funding of local and regional authorities in Croatia:

a. The total levels of revenue income available are not adequate to meet the needs of the authorities. This was an almost universal complaint and is reflected in that fact that local and regional authorities are allocated only about 6% of the state budget of which the City of Zagreb receives half.²⁰ We recommend that the overall level of funding for local and regional authorities is increased.

b. Both local authorities (towns and municipalities) and regional authorities have access to financial resources whose level they themselves have the power to decide which are small or, in some cases, negligible. They have virtually no margin for manoeuvre. Technically, as earlier indicated, there are some “own resource” taxes – for instance, the surtax on income tax which is quite widely used but unproductive for many authorities and unpopular in all - but they are very slender. We recommend that the availability of “own resource” funding is greatly increased.

c. Too much of the funding made available to the counties and “large towns” for the provision of the major “decentralised” services of education, social welfare, health care and fire-fighting is wholly earmarked for purposes dictated by central government. A “golden halter” is applied, as funds are supplied but with a strong policy steer attached. As the recent “Policy Guidance Papers” prepared for the EU CARDS capacity strengthening programme for Croatia²¹ say, the present decentralisation systems contradict the purpose of decentralisation itself. The “decentralised” functions are, they say,

²⁰ The figure of 6% is contested in some quarters - some sources suggest 10% - but we believe that, whatever the precise percentage, insufficient financial resources are allocated.

²¹ Health Sector, October 2006 paragraph 3; Social Welfare Sector, November 2006 paragraph 3; Education Sector, December 2006 paragraph 3.

“actually State *delegated* functions”. There is no accompanying reasonable degree of discretion for the service-delivery authorities. Adopting this assessment, we agree that true decentralisation has not been achieved and we strongly recommend that the position be reviewed and steps taken to ensure that real decentralising measures are adopted.

d. Fourthly, the funding system in Croatia does very little to relieve the difficulties of the very smallest municipalities. Formally, as already mentioned, they have the same competences as other municipalities and towns (except “large towns”) but a vicious circle of declining competences in practice and limited financial resources keeps them very weak. Basic income tax revenues are low; they have negligible income from other taxes or charges; and the insufficiencies of the equalisation fund system leave them without a stable and reliable income. We recommend that, along with our other proposals for the amelioration of the condition of the small municipalities, their funding be improved. We should repeat the point made earlier. In their areas, these municipalities are the *only* manifestation of local self-government (as opposed to regional/county government) and, in order that the Charter of Local Self-Government be fully respected, their position *must* be improved.

e. An inevitable feature of Croatian government in recent years has been frequent change, as reforming measures are implemented. Two complaints we have heard, however, raise concerns. One is that the introduction of eight different reforms of the financial arrangements of local and regional authorities since 1993 has been the cause of great instability in the system. Another is that the reform *during the financial year* of the system of government grants has caused disruption where funding levels have been abruptly reduced. We, therefore, recommend that, in the interests of the stability and predictability of their funding resources, any future changes are introduced only after the widest possible consultation with local and regional authorities and with sensitivity to their interests.

F. Co-operation between local and regional authorities

53. The Charter of Local Self-Government provides that local authorities (a term which can certainly be extended in principle to embrace Croatia’s regional (county) authorities) are to 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”. (Art 10(1)). The importance of this provision - discussed at length in the recent Congress Recommendation 221 (2007) is two-fold. On the one hand, it expresses a freedom for local and regional authorities which is simply an element of their general autonomy. On the other hand, the provision provides an important response to the problem which arises in many European countries of the existence of some local authorities (especially at the lowest tier and often in rural areas) which are, in truth, too small to handle the full range of functions conferred upon them. This occurs, in particular, where functions are allocated to all municipalities within a class and without differentiation between those which may be quite large and well-resourced and these, on the other hand, which are small and under-resourced. As explained in paragraph 48 above, this is a situation which we believe occurs in Croatia. Even after the separation of the “large towns” into a different group, there is a big size range within the remaining municipalities. And we believe that, in the case of the smallest municipalities, the solution must lie, in the absence of any general enthusiasm for a widespread voluntary merger of local authorities, in a substantial expansion of inter-authority co-operation in the delivery of the more significant services. Certainly that is a solution much to be preferred over having the smaller municipalities simply receiving “help” from their counties.

54. The 2001 Act does, it is true, contain an outline permission (and indeed duty) for all types of authority to co-operate. Art 12 provides (in addition to the provision made for founding associations - see below) that “in the pursuit of their common interests, municipalities, towns and counties shall co-operate for the advancement of the economic and social development of their communities”. This is, however, a provision which is deficient in two principal respects. First, it is probably too narrowly cast in terms of sectoral coverage. The possibility of co-operation should be potentially available across virtually all services and not be confined to “economic and social development”. And secondly, the provision made should be much more proactive. It should urge the adoption of co-operation, as necessary or appropriate, and should, with advantage, provide for the specific mechanisms, whether by agreements, joint committees or whatever, to enable co-operation to happen on the ground. The Congress, in its recent Recommendation 221 (2007) on the Institutional Framework of Inter-Municipal Co-operation and in the accompanying explanatory report CPL/INST (13) 1 REV emphasizes the importance of inter-municipal co-operation as a means of making savings and improving efficiency in

the handling of municipal affairs. It furthermore underlines the advantages of inter-municipal co-operation in comparison with the merging of municipalities and the privatisation of public services. It recommends to member states and local authorities - within their respective fields of competence - to enhance inter-municipal co-operation and the development of a legal framework as well as to raise awareness amongst local elected representatives for the importance and advantages of co-operation between municipalities.

55. In relation to Croatia, we would strongly recommend that, in the first instance, the Government introduces new legislation to improve the provision already made for inter-municipal co-operation.

G. Associations of Local and Regional Authorities

56. The Charter of Local Self-Government makes provision for the entitlement of local authorities to belong to associations for the protection and promotion of their common interest. Also the right to belong to international associations and to co-operate with counterparts in other States. There appears to be no general problem in Croatia with either the right to establish associations of local or regional authorities or with actual practice, whether in relation to domestic associations or in relation to international connections – although we are also aware that there is a general need for the administrative and professional capacity of the associations to be strengthened. Within Croatia, there exist the Association of Towns, the Association of Municipalities (and the Union of the two Associations) and the Association of Counties (created in 2003). Although we have been told that the degree of consultation by government with associations is variable and that the input of associations, therefore, varies, our impression is that the associations have strong support from individual authorities and do manage to play a strong representative role. We recommend that (a) all departments of the Croatian Government maintain constant contact with the Associations and involve them, on a consultative basis, wherever possible (see also paragraph 50 above); and (b) the Associations strive, both separately and jointly, to strengthen their representative role on all issues relating to local and regional self-government.

57. Another issue we should also raise is that of the stipulation in Art 12 (3) of the 2001 Act that: National associations may be founded if the decision to found such an association is made by more than one half of the municipalities, towns or counties. An equivalent predecessor provision which contained a similar 50% rule was criticised by Recommendation 46 (1998) of the Congress on the grounds of doubts as to its compatibility with Art 11 (freedom of assembly) of the European Convention on Human Rights. We feel obliged to reiterate the same doubts and criticisms. We recommend that the 50% rule be removed.

58. As to international connections, we are aware that there are several consortia (e.g. those based on the “Danube” and “Adriatic” areas) within which the authorities in Croatia have flourishing relationships.

59. Croatia has signed and ratified The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities which entered into force in Croatia on 18 December 2003. Under this Convention, Croatia is obliged to seek ways of eliminating obstacles to transfrontier co-operation and to grant to authorities engaging in international co-operation the facilities they would enjoy in a purely national context. The Convention is intended to encourage and facilitate cross-border agreements which may cover questions such as regional development, environmental protection, the improvement of public services, etc., and may include the setting up of transfrontier associations or consortia of local authorities. We note, however, that Croatia has not yet either signed or ratified the two Protocols to the Convention and we recommend that this be done.

H. Judicial Protection

60. Art 11 of the Charter of Local Self-Government seeks to ensure for local authorities “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”.

61. This constitutional right is supported by Art 128 of the Constitution which requires the Republic’s Constitutional Court to decide complaints about the constitutionality of laws as well as

complaints against the acts/decisions of public bodies (including bodies of local and regional self-government) on the grounds of alleged violation of the constitutional right to local and regional self-government. These constitutional provisions are then supplemented by further provisions contained in the Constitutional Act on the Constitutional Court of the Republic of Croatia 1999 (as amended). Art 62 of that Act makes provision for anyone (a process of “concrete” control) to lodge a constitutional complaint against an act of a state body, a body of local or regional self-government or other public authority alleging violation of his or her human rights guaranteed by the Constitution or his or her right to local and regional self-government. Such complaints are without charge to the complainant but there is normally an obligation to exhaust other legal remedies. If a complaint is upheld, the Constitutional Court is empowered to annul the act complained of.

62. Running in parallel with that provision upholding the individual right to self-government is Art 36 of the Act of 1999 which enables (this time, in a process of “abstract” control) the representative body of a unit of local or regional self-government to request the Constitutional Court to review the constitutionality of “a law regulating the organisation, competence or financing of units of local and regional self-government”. Such a request has to be decided, using the Court’s emergency procedure, within a period of 30 days.

63. In addition to the business conducted under Arts 36 and 63 (Art 62?), the Constitutional Court handles the further business generated by Art 128 of the Constitution and Part IX of the Constitutional Act on the Constitutional Court. Those provisions direct to the Court business relating to the constitutionality and legality of elections, including elections to bodies of local and regional self-government. The business includes the hearing of appeals in electoral disputes initially decided by the competent electoral commission.

64. In the light of the record of the Constitutional Court in sustaining the rights guaranteed by the Constitution and also the confirmation we received that the terms of the European Charter of Local Self-Government are, as an international treaty, enforceable in the courts of Croatia, we have no general concerns about the degree of judicial protection afforded to local and regional authorities. We also understand that problems in the work of the Administrative Court in Croatia which have a strong bearing on the operation of local and regional self-government (and particularly on the protection of the autonomy of authorities) are to be addressed. We would ask that the Congress be kept informed of developments.

Part III: Proposed Reforms

65. As indicated earlier in this report, much further legislation is anticipated in the coming months and years, to achieve the full implementation of the process of reform already embarked on. One such new piece of legislation (expected to be implemented in January 2008) would transfer powers to issue construction permits from the state to counties and large towns. We have made some suggestions of our own for further reforms.

66. Otherwise, the main project already underway is that of the introduction of directly elected mayors and prefects and their deputies (including provision for minority group representation through separately elected deputies). This is a commitment by the Croatian Government - for implementation in advance of the next local and regional elections. Two Laws have already been introduced into the parliamentary process - to create the system of elections and to amend the 2001 Act to redesign the executive authority of the municipalities, towns and counties and the relationship between the mayors/prefects and the councils. We understand that, although we have not ourselves examined the draft legislation, it is, as necessary and following advice from Council of Europe consultants, being brought into line with Charter requirements of the responsibility of executive bodies to the elected councils and the consequences for tenure in office (and removal from office) of both mayors/prefects and councils. We understand further that, although there are both well-known advantages and disadvantages of a move to direct elections, the proposed change is popular in Croatia. We ourselves encountered no one in government at any level who opposed the reform, although our sense is that academic comment has been more critical.

Part IV: Conclusions and Recommendations

67. Our overall assessment of the condition of local and regional democracy in Croatia is that there is an apparent commitment at all levels to the principle of decentralisation and to establishing real autonomy of operation at both levels. Much progress has been made by way of reforming legislation since 2001. However, as we have noted in earlier sections of this report, there is room for much improvement by way of strategic thinking about the future direction of decentralisation and by further legislation and practical implementation. There are continuing Charter-related issues, focusing especially on the need to confer autonomous competences at all levels (both regional and local) and to ensure the availability of appropriate financial resources. We are also concerned that decentralisation in Croatia has so far been a “top-down” and “centrally managed” process which has involved insufficient consultation with local and regional interests. There is a continuing perception that older attitudes of central control persist and there should in future be a renewed commitment not only to the “letter” of the Charter’s terms but also to the “spirit” of decentralisation and subsidiarity which it embraces. There should also be a renewed commitment to openness in the overall process of decentralisation.

68. We should also remind, in closing, that the systems established for both municipalities (including large towns) and counties, the Republic of Croatia is seeking to satisfy standards set for *both* local *and* regional self-government. It is essential that, especially in the rural areas of the country, the Charter of Local Self-Government is fully respected in the provision made for the powers and autonomy of the municipalities. County level government, though it may provide *regional* self-government, cannot be a substitute for full local government provision.

APPENDIX 1

Programme of the 1st monitoring visit of the Congress on local and regional democracy in Croatia ZAGREB AND VUKOVAR 18 – 20 April 2007

Composition of the delegation:

Mr Karsten Behr (Germany, EPP/CD, Chamber of Regions)

Mr Cees Bijl (The Netherlands, SOC, Chamber of Local Authorities)

Prof. Chris Himsworth (United Kingdom, consultant, member of the Group of Independent Experts on the Charter of Local Self-Government)

Ms Almut Schröder (Congress secretariat)

Ms Lilit Nikoghosyan (Congress secretariat)

18 April 2007

- 9:00 – 10:00 Meeting at the Union of the Association of Towns and the Association of Municipalities of the Republic of Croatia
Attended by:
Mrs Irena Bakal, Executive Director, and other members of the Union
- 11:00 -11:45 Meeting with representatives from the City of Zagreb
Attended by:
Mrs Tatjana Holjevac, President of the City Assembly
Mr Neven Mimica, Member of the City Assembly
Mrs Wendy Zečić, Head of the Office
- 12:00- 12:30 Meeting with Mr Adrian Majher, Head of Department for International Cooperation, Mayor's Office, City of Zagreb
- 12:30 – 14:00 Lunch (organized by the Central State Office for Administration)
- 14:00 – 14:30 Meeting with the Ministry of the Sea, Tourism, Transport and Development
Mr Božidar Kalmeta, Minister
- 15:00 – 17:00 Meeting at the Central State Office for Administration
Attended by:
Mr Antun Palarić, State Secretary
Mr Pavao Matičić, Deputy State Secretary
Mrs Miroslava-Nina Mišković, Head of the Department
Mr Niko Rajić, Assistant Minister, Ministry of Finance
Mrs Dubravka Šuica, Head of the Croatian Delegation to the Congress of the Council of Europe and Mayor of Dubrovnik
Mr Ante Sanader, Prefect, Split – Dalmatian County
Mrs Nedjeljka Škarić, Mayor of Šibenik
Mr Branko Bošnjak, acting Director of the Academy for Local Democracy
Mr Marko Kovačić, local long term expert

19 April 2007

- 9:30 – 10:15 Meeting at the Constitutional Court of the Republic of Croatia
Attended by:
Prof. Dr. Jasna Omejec, Vice-President of the Constitutional Court of Croatia
Prof. Dr. Smiljko Sokol, Judge, Constitutional Court
Mr. Teodor Antić, Chief Secretary of the Constitutional Court
Mrs. Ksenija Podgornik, Head of the Office
- 10:30 –13:30 Meeting with Parliamentarians at the Croatian Parliament
Attended by:

Mrs. Đuđa Adlešić, Vice-President of the Parliament Committee for Local and Regional Self-Government and Mayor of Bjelovar
 Mr. Zvonimir Mršić, President of the Parliament Committee for Local and Regional Self-Government
 Mr. Kruno Peronja, Vice-President of the Parliament Committee for Local and Regional Self-Government;
 Parliamentarians: Mr. Vladimir Štengl, Mr. Damir Kajin, Mr. Tonino Picula, Mr. Vojislav Stanimirović, Mr. Damir Kajin

- 13:30 – 14:00 Lunch (Croatian Parliament restaurant)
 14:30 – 16:15 Meeting with Professor Ivan Kopric, Law Faculty of Zagreb University

20 April 2007

Visit to the City of Vukovar

- 9:30 -10:45 Meeting at Europe House (NGO)
 Attended by:
 Mrs Ljiljana Gehrecke, President of Europe House
 Mrs Navica Gajic, Deputy President of the Europa House
 Mrs Sandra Cvikić, Executive Board of Europe House
- 11:00 – 11:00 Meeting at the City Museum
 Attended by:
 Mr Slavko Jurić, President of the Association of Croatian war veterans
 Mr Danijel Rehak, Teacher, President of the Association of Prisoners of Serbian concentration camps
 Ruža Marić, Teacher, Director of the City Museum
- 12:15 -13:15 Meeting with Representatives of the Office of Serbian Minority
 Attended by:
 Mr Jovan Ajduković, Deputy Governor of the Vukovar-Srijem region
 Mr Ljubomir Mikić, President, Center for Peace, Legal Advice and Psychosocial Assistance
- 15:00 -16:00 Meeting with Mrs Zdenka Buljan, Mayor of Vukovar

APPENDIX 2

Programme of the 2nd monitoring visit of the Congress of Local and Regional Authorities on “Local and Regional Democracy in Croatia” ZAGREB AND PRIMOSTEN (2-4 JULY 2007)

Composition of the delegation:

Mr Karsten Behr (Germany, EPP/CD, Chamber of Regions)

Mr Cees Bijl (The Netherlands, SOC, Chamber of Local Authorities)

Prof. Chris Himsworth (United Kingdom, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government)

Ms Almut Schröder (Congress Secretariat)

Monday 2 July (Primosten)

10:00 – 11:00 Meeting with
- Mr Stipe Petrina, Mayor of Primošten
- Mr Zorica Lauš Pionić, President of the Municipal Council of Primošten

14:00 – 15:00 Meeting with Mr. Ante Sanader, County Prefect Split-Dalmatian County

Tuesday 3 July 2007 (Zagreb)

9:00 – 10:00 Meeting with Mr Tom Rogers, USAID's local government project

10:30 – 11:30 Meeting with Prof. Zvonimir Lauc
Professor of Law at Osijek University

12:00-13:00 Meeting with Mr Damir Bajcs, President of the Croatian Association of Counties/Head of Bjelovarsko - Bilogorska County and Ms Marta Vidaković Mukić, Secretary General of the Croatian Association of Counties

14:00-16:00 Meeting with Mr Antun Palarić, State Secretary, Central State Office for Administration

Wednesday 4 July 2007 (Zagreb)

9:00 – 10:00 Meeting with Mr Niko Raič, Assistant Minister in the Ministry of Finance,
Mrs Maja Lukeš-Petrović, Head of Department and Mira Mastelic, Administrator

11:00 – 12:00 Meeting with Mr Davor Žmegač, Mayor of the Town of Kutina, member of the Institutional committee of the Congress of Local and Regional Authorities

14:00-16:00 Mr Tonino Picula, Member of Parliament and mayor of the City of Velika Gorica,

Mr Miljenko Dorić, Member of Parliament, member of the Parliamentary Assembly of the Council of Europe