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Local and regional democracy in Georgia

Monitoring Committee

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Recommendation 426

(2018).....

Explanatory

memorandum.....

Summary

This report follows the third monitoring visit to Georgia since it ratified the European Charter of Local Self-Government in 2004.

The report highlights the substantial progress achieved by Georgia in the field of local democracy since the previous Congress monitoring and post-monitoring visits. The rapporteurs positively note the integration of the subsidiarity and commensurability principles and the clause of general competence into the constitution. They also welcome such important measures as the development of a comprehensive reform strategy for decentralisation and modernisation of local government, the introduction of direct election of mayors, strengthening of the financial capacity of local self-government and the constitutional status of the Autonomous Republic of Adjara, the modernisation of the auditing system and the official recognition of the representative position of the National Association of Local Authorities of Georgia (NALAG).

However, the rapporteurs express their concerns about difficulties faced by some opposition members in access to information held by municipal administrations and the risks of over-concentration of power in the hands of the mayor in view of his/her role in the appointment of deputy mayors. They also regret, in particular, the deficiencies in the financial equalisation procedure and the lack of clarity in distribution of competences.

The rapporteurs therefore suggest adopting various measures aimed at restoring mutual trust between the representatives of the ruling party and the opposition which is necessary for the proper functioning of local democracy. They recommend to the Georgian authorities to establish an adequate legal framework with regard to sectorial legislation to strengthen the role of the Sakrebulo in the appointment of deputy mayors, to improve the financial equalisation formula and to continue the regional development efforts.

Lastly, Georgian authorities are invited to ratify provisions of the Charter that are *de facto* applied in Georgia and which are still not ratified, and to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

RECOMMENDATION 426 (2018)**[2]**

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

- a. Article 2, paragraph 1.b, of Statutory Resolution (2015) 9 relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;
- b. Article 2, paragraph 3, of Statutory Resolution (2015) 9 relating to the Congress, stipulating that “the Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;
- c. Chapter XVII of the *Rules and Procedures* of the Congress on the organisation of monitoring procedures;
- d. previous Congress recommendations on local and regional democracy in Georgia (157 (2004) and 334(2013) and the post-monitoring Roadmap for Georgia (2015);
- e. the appended explanatory memorandum on local and regional democracy in Georgia.

2. The Congress points out that:

- a. Georgia signed the European Charter of Local Self-Government on 29 May 2002 and ratified it on 8 December 2004 with entry into force on 1 April 2005. In accordance with Article 12, paragraph 1 of the Charter, Georgia declared itself not bound by Article 4 paragraph 6, Article 5, Article 6 paragraph 2, Article 9 paragraph 6 and Article 10 paragraphs 2 and 3;
- b. Georgia has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority;
- c. the state of local and regional democracy in Georgia was the subject of a Congress monitoring report in 2013. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as the Monitoring Committee) decided to examine the situation of local and regional democracy in Georgia in the light of the Charter. It instructed Michail Angelopoulos, Greece (L, EPP/CCE) and Stewart Dickson, United Kingdom (R, ILDG) as rapporteurs to update the above mentioned report on local and regional democracy in Georgia and submit it to the Congress;
- d. The Congress delegation carried out a monitoring visit to Georgia from 17 to 18 April 2018. The detailed programme of the visit is set out in the appendix to this document.

3. The co-rapporteurs wish to thank the Permanent Representation of Georgia to the Council of Europe and the Georgian authorities at central, regional and local levels, the National Association of Local Authorities of Georgia (NALAG) and experts as well as other interlocutors for their valuable co-operation at different stages of the monitoring procedure and the information conveyed to the delegation.

4. The Congress notes with satisfaction the:

- a. substantial progress achieved in the field of local and regional democracy since the previous Congress monitoring and post-monitoring visits to Georgia;
- b. integration of the principles of the Charter in the constitutional provisions, notably the explicit recognition of the principles of subsidiarity alongside the commensurability principle and the introduction of a clause of general competence;
- c. visible political will demonstrated by the Georgian authorities to fulfil the Congress recommendations, notably as regards further integration of the guiding principles of local self-government into domestic legislation;
- d. introduction of direct election of mayors as suggested by Congress Recommendation 334 (2013);
- e. establishment of new mechanisms of citizens' participation in public decision-making;
- f. strengthening of the financial capacity of local government through additional tax revenue;
- g. modernisation of the auditing system and recruitment of specialised auditing staff;
- h. development of a comprehensive reform strategy aimed at decentralisation and modernisation of local government and the further elaboration of a regional development strategy in order to smooth out regional disparities which still prevail in Georgia;
- i. strengthening of the constitutional status of the Autonomous Republic of Adjara ;
- j. official recognition of the representative position of NALAG as an interlocutor and partner and its active involvement in discussions and negotiations regarding all matters which concern local authorities directly.

5. The Congress expresses concern about :

- a. lack of clarity in distribution of some competences, notably in the area of water supply, as a result of inconsistency between the sectoral legislation and the Code of Local Self-Government coupled with slow progress in the process of aligning the sectoral legislation with decentralisation policies (Article 4.4);
- b. mismatch between the equalisation formula and the interests of weaker municipalities who lack stimulation to increase their own revenues since this would decrease the amount of the equalisation grant (Article 9.5);
- c. difficulties faced by some opposition members in access to information held by municipal administrations that allegedly prevent them from fulfilling their role in assemblies and other municipal bodies and increase tensions between the representatives of the ruling party and the opposition;
- d. risks of over-concentration of power in the hands of mayor, notably in view of his/her role in the appointment of deputy mayors, that could limit the direct accountability of the executive to the Sakrebulo;
- e. formula for the calculation of the number of employees in municipalities that restricts the organisational autonomy of local authorities;
- f. delays in transferring immovable property and agricultural land resources to municipalities.

6. In the light of the above, the Congress requests that the Committee of Ministers invite the Georgian authorities to:

- a. accelerate the alignment of the legal framework, notably sectoral legislation, and policies with decentralisation objectives to ensure that powers given to local authorities are full and exclusive;
- b. revise the formula of calculation of equalisation transfers, in particular the distribution criteria, and increase the equalisation fund to smooth out regional and inter-municipal disparities;

- c. develop capacity building programmes for local council members, in particular in remote municipalities, with regard to the use of all available legal instruments for the protection of their rights and adopt other measures aimed at restoring mutual trust between the representatives of the ruling party and the opposition which is necessary for the proper functioning of local democracy;
- d. introduce a legal provision concerning the approval by the Sakrebulo of the appointment of deputy mayors, in the light of Tbilisi's experience, in order to increase the direct accountability of the executive to the municipal council;
- e. review the formula for the calculation of the number of employees in order to make it more flexible and adjustable to particular local needs and circumstances;
- f. accelerate the "municipalisation" of immovable property and natural resources to enlarge and diversify the financial basis of local government;
- g. enhance the financial capacity of local governments, including the capacity to generate their own resources through all available means, including further enlarging the tax base;
- h. further elaborate the legal framework, especially concerning sectoral laws, in order to facilitate and promote inter-municipal co-operation; ▲
- i. continue the regional development efforts, while ensuring a certain degree of continuity with what has already been achieved in the area of regional development strategy and policies, in order to ensure balanced and sustainable socio-economic regional development;
- j. ratify Article 4 paragraph 6, Article 5, Article 6 paragraph 2, Article 9 paragraph 6 and Article 10 paragraphs 2 and 3 which are *de facto* applied in Georgia;
- k. sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) as soon as possible.

EXPLANATORY MEMORANDUM

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

1. In accordance with Article 2, paragraph 3, of Statutory Resolution CM/Res(2015)9 relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto: “[t]he Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”.

2. Georgia joined the Council of Europe on 27 April 1999. It signed the European Charter for Local Self-Government (ETS No. 122, hereafter “the Charter”) on 29 May 2002 and ratified it on 8 December 2004, with entry into force on 1 April 2005. However, it did not ratify Article 4, paragraph 6, Article 5, Article 6, paragraph 2, Article 9, paragraph 6, and Article 10, paragraphs 2 and 3.

3. Georgia ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) on 24 July 2006, with entry into force on 25 October 2006. It has signed (on 2 November 2005) but not yet ratified the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159). It has neither signed nor ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

4. Congress Recommendation 334 (2013) on local and regional democracy in Georgia is the most recent recommendation on local and regional democracy in that country.

5. The present report relates to a Congress delegation's visit to Georgia from 17 to 18 April 2018 in order to monitor the situation of local and regional democracy in the country on the basis of the Charter. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (Monitoring Committee) appointed Mr Michail Angelopoulos (Greece, EPP/CCE) and Mr Stewart Dickson (United Kingdom, ILDG) as co-rapporteurs on local and regional democracy respectively. They were assisted by Professor Dr Nikolaos-Komninos Chlepas, member of the Group of Independent Experts on the European Charter of Local Self-Government and by the secretariat of the Congress.

6. The Congress delegation met with the minister of regional development and infrastructure, the deputy minister of finance, the speaker of the parliament, the first deputy and the deputy public defender, the deputy auditor general, officials of the Government of the Autonomous Republic of Adjara, mayors, heads of city

councils and councillors from Tbilisi, Mtskheta and other cities, the representatives of the National Association of Local Authorities of Georgia (NALAG) and with representatives of non-governmental organisations (NGOs). The detailed programme of the visit is appended to the present report.

7. The co-rapporteurs wish to thank the Permanent Representation of Georgia to the Council of Europe and all those whom it met during the visit for their readiness to assist the delegation and for the information they so willingly supplied. It also thanks the Georgian delegation to the Congress and the associations of local and regional authorities for contributing to the organisation and smooth running of the visit.

2. HISTORICAL AND POLITICAL BACKGROUND

8. Georgia is one of the oldest nations in Europe, with roots reaching back to ancient kingdoms such as Colchis and Iberia. In the early 4th century, Christianity was adopted as the State religion and the Georgian alphabet emerged. A unified Kingdom of Georgia flourished in the 12th century but it declined and eventually disintegrated under the hegemony of various regional powers. In the late 18th century, the eastern Georgian Kingdom of Kartli-Kakheti forged an alliance with the Russian Empire, which annexed the kingdom in 1801 and conquered the western Kingdom of Imereti in 1810. Immediately following the Russian Revolution, Georgia unilaterally declared its independence and in April 1918 formed together with Armenia and Azerbaijan the Transcaucasian Democratic Federative Republic. A month later, in May 1918, the federation split into three independent States, one of which was the Democratic Republic of Georgia. In February 1921 the Red Army invaded Georgia, which was forcibly incorporated into the USSR in March 1922, as a part of a new Transcaucasian Federation. In 1936, this was dissolved and Georgia emerged as a Soviet Union Republic.

9. On 31 March 1991, Georgians overwhelmingly voted in favour of independence from the Soviet Union in a referendum (with a turnout of 90.5%, 99% voted for independence). On 9 April 1991 (the second anniversary of the "9 April tragedy"), Georgia proclaimed its sovereignty and its independence from the Soviet Union.

10. Following the proclamation of independence, Zviad Gamsakhurdia was nominated as the head of the new Georgian State. However, on 28 November 1991, South Ossetia unilaterally proclaimed its independence from Georgia, followed by Abkhazia – supported by Russia – in July 1992. In January 1992, the Georgian Government was overthrown by the opposition and Eduard Shevardnadze (former leader of the Communist Party of Georgia) was nominated as interim head of State while a new government was being formed. In 1995, Shevardnadze was elected as President of Georgia for a first term. His second term, which began in 2000, was characterised by a serious economic crisis.

11. Mounting public discontent over rampant corruption and ineffective government services, followed by an attempt by the incumbent Georgian Government to manipulate national legislative elections in November 2003, touched off widespread protests known as the "Rose Revolution", which led to the resignation of Shevardnadze and to the election of Mikhail Saakashvili, the leader of the United National Movement (UNM) in 2004. Saakashvili engaged in reforms aimed at liberalising the economy and led a pro-Western foreign policy, also applying for the adhesion of Georgia to the North Atlantic Treaty Organization (NATO). Saakashvili was re-elected in 2008 for a second term, mostly marked by rising tensions with the separatist regions of Abkhazia and South Ossetia, which culminated in an armed conflict between Russia and Georgia in 2008.

12. On 26 August 2008, Russia (followed by Nicaragua, Venezuela and Nauru) officially recognised the independence of South Ossetia and Abkhazia, which are now physically separated from Georgia by the Administrative Border Line (ABL). Since 2014, the Russian Federation has engaged in a process to integrate the separatist regions within the framework of the so-called "alliance and integration treaty", enabling the

political and judicial systems of the regions and the armed forces of South Ossetia to be *de facto* incorporated into the Russian Federation. In the meantime, public discontent about the outcome of the conflict, a deteriorating economic situation and restrictions on fundamental freedoms, caused Saakashvili's defeat in the 2012 parliamentary elections. The winner of these elections was the Georgian Dream coalition, created by the Bidzina Ivanishvili. Conceding defeat, Saakashvili named and the parliament of Georgia appointed Bidzina Ivanishvili for the position of a Prime Minister due to amendments to the constitution that had been agreed by the previous parliament in October 2010.

13. On 27 October 2013, Giorgi Margvelashvili (of the Georgian Dream coalition) was elected as President of Georgia, ending a tense year of power-sharing between Saakashvili and Ivanishvili. The new prime minister, Irakli Garibashvili, followed a foreign policy similar to that of the previous governments (mostly focused on NATO and European Union integration), while managing to avoid new tensions with Russia. On 24 June 2014, Georgia signed an association agreement with the EU with the aim of strengthening political and economic ties. In December 2015, Prime Minister Garibashvili resigned and was replaced by Giorgi Kvirikashvili.

14. Over the past decade, Georgia's economy has grown at an average annual rate of 5%, mainly thanks to foreign direct investment (the biggest foreign investors in 2016 being Azerbaijan, Turkey and the UK). Poverty declined from 35% in 2006 to 17.1% in 2016.

3. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

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

15. The current Constitution of Georgia was adopted in 1995 and has been amended numerous times since then. The parliament amended the Constitution on 15 December 2017^[3] (see below) and provided for the abolition of direct presidential elections. In this way the country completed its evolution towards a parliamentary system that began in 2010, when five major amendments (in force since 2013) significantly reduced presidential powers.

16. The year 2013 also marked important developments in the constitutional status of local government in Georgia as a new chapter on local self-government was added to the constitution (Chapter Seven-1):

Article 101-1

1. The establishment procedure and activity of representative and executive bodies of local self-government shall be defined by organic law. Executive bodies of local self-government shall be accountable to representative bodies of local self-government.

2. Citizens of Georgia registered within the self-governing unit area shall elect a local self-government representative body Sakrebulo by direct, universal, equal suffrage through secret ballot.

3. The procedure for establishment and revocation of a local self-governing unit, also the procedure for revising its administrative frontiers shall be determined by organic law. Consultations with a local self-governing unit shall precede the revocation of a self-governing unit or revision of its administrative frontiers.

Article 101-2

1. Powers of local self-government shall be delimited from those of state bodies. A self-governing unit shall have its own and delegated powers. The powers and the basic principles of how to define powers of local self-government shall be determined by organic law.

2. *A self-governing unit shall exercise its powers independently and by its own responsibility as determined by the legislation of Georgia. The powers defined by organic law shall be exclusive.*
3. *A self-governing unit shall have the right to take any decision on its own initiative, provided that the decision does not fall within the competence of any other government agency or is not prohibited by law.*
4. *State bodies may delegate rights and powers to a self-governing unit on the basis of legislative acts and agreements only by transfer of relevant material and financial resources. The procedure for calculation of the amount of such resources shall be defined by law.*

Article 101-3

1. *Local self-government shall have its [own] property and finances.*
2. *Decisions made by self-government bodies within the scope of their competence shall be binding in the territory of self-governing units.*
3. *State supervision over the activities of local self-government bodies shall be carried out as determined by law. State supervision provides compliance of normative acts of local self-government with the legislation of Georgia and proper implementation of delegated powers. State supervision shall be exercised in proportion to its goals.*

17. Local Government in Georgia is realised at the level of municipalities, divided into self-governing communities and self-governing cities. The municipalities consist of three organs: the Sakrebulo (council) is its representative and by function the legislative organ; the Gamgeoba (city hall) is the local administrative organ and is headed by the Gamgebeli (head of municipality, lord mayor or sometimes mayor), who is the executive organ in a self-governing community. The head of a self-governing city is called the Meri (mayor).

18. In 2013, the Georgian Government launched a process of comprehensive territorial and administrative reform and put forward a new Code of Local Self-Government (hereafter, the Code). The National Association of Local Authorities (NALAG) criticised the quality of the drafting process, saying it had been rushed through without due consultation. On 5 February 2014, the Georgian Parliament approved the new Code (which was amended in 2017) and repealed previous laws, such as the Organic Law on Local Self-Government, the Law on State Supervision, the Law on the Capital Tbilisi and the Law on Municipal Property.

19. Article 2 of the Code defines the concept of local self-government as “the right and ability of citizens of Georgia registered in a self-governing unit to solve, based on the legislation of Georgia, local issues through local authorities elected by them”. The Code brought about important changes in the system of local self-government in Georgia. It introduced the direct election of heads of all the municipalities and the direct election of the mayors of the 12 cities granted the status of “self-governing city”. Previously, Tbilisi had been the only city in Georgia in which the mayor was elected directly (with a threshold set at 30%), while mayors of self-governing cities (initially five cities) were elected by the Sakrebulos (city assemblies or councils).

20. In order to bring the electoral system into line with the new Code, in March and April 2017 the parliament adopted an election-related package of bills which introduced key changes; these included setting the minimal threshold for electing both Meris and Gamgeobelis in the first round of voting at 50%; lowering the threshold for proportional, party-list contests in provinces from 5% to 4%; increasing the number of party-list seats in most Sakrebulos; and introducing a new mechanism for additional State funding for political parties.

21. The initial version of the Code advanced the idea of establishing a public council at village level, based on civic principles, which would aim at meeting primary needs within the areas of competence of self-governing units. However, this idea was eventually abandoned and, pursuant to the new Code, the Gamgebeli is authorised to appoint a representative in the municipality’s administrative unit – a “village trustee”, whose powers are determined by the regulations of the Gamgeoba in the municipality.

22. In municipalities, Sakrebulo are empowered to remove Meri or Gamgebeli by a two-thirds vote of no confidence; Article 51 of the Code entitles a Sakrebulo to initiate a vote of no confidence against a Meri or Gamgebeli if more than half of the members of the Sakrebulo, or at least 20% of the total number of constituents registered in the territory of the municipality, are in favour of the proposal. A vote of no confidence cannot, however, be taken in the first six months following the election of a Gamgebeli, or during the last year of his or her term of office. If a Sakrebulo does not pass a vote of no confidence against the Gamgebeli or Meri, another vote of no confidence may not be taken within the next six months.

23. The Gamgebeli or Meri holds a full executive mandate, while the Sakrebulo has the power to raise taxes and to manage and monitor budgets. In this system, the Gamgebeli (or Meri in cities) has the unilateral power to nominate the heads of administrative/territorial divisions and directors of municipal services. The Sakrebulo has the right to monitor the activity of these divisions and to hold Gamgebeli accountable for their effective operation. Gamgebelis should provide reports to the Sakrebulo on the operation and implementation of local budgets every six months. A slightly different model exists in the capital city of Tbilisi; here, members of the municipal cabinet (vice-mayors and heads of municipal services) are nominated by the mayor and approved by the city council.

24. Both Gamgebeli (or Meri) and the Sakrebulo can establish commissions, although those commissions are different in nature. The commissions in the Gamgeoba established by the Gamgebelis are structural units and directed towards services (infrastructure, procurement, etc.) to manage the concrete direction of the activities of a municipality. Their areas of interest vary across the different municipalities, the most common commissions in Gamgeobas relating to land use regulation, construction and architectural licensing, social care, and action programmes, etc. A Sakrebulo can also establish up to five commissions, such as those on legal matters and credentials, local finance and budgeting, local economy and municipal services, education, culture and sport, and social issues. These commissions are established by decision of the Sakrebulo and are made up of members of Sakrebulo; different fractions of the Sakrebulo are proportionally represented, according to the number of seats each fraction holds in the municipal council. Sakrebulo can also create *ad hoc* working groups.

25. On 30 June 2017, the Parliament of Georgia approved amendments to the Code and reduced the number of self-governing cities from 12 to five; five cities kept their status as independent self-governing units (Tbilisi, Kutaisi, Rustavi, Poti and Batumi), while the seven remaining cities lost this status (Telavi, Mtskheta, Gori, Akhaltsikhe, Ambrolauri, Ozurgeti and Zugdidi). In addition, the 14 municipalities that were formed as a result of the 2014 territorial reform were reunited into seven municipalities – a return to the situation prior to the 2014 reform. In this way, the overall number of self-governing municipalities was reduced from 71 to 64.

26. In Georgian law there is a formal distinction between self-governing cities (k'alaki) and communities (t'em'i). A self-governing city (t'vit' mmartveli k'alaki) is an administrative territorial unit of a unitary urban settlement that has the status of a local self-governing unit. A municipality of communities (t'emta munits'ipaliteti) is an administrative territorial unit that is comprised of a number of rural and urban communities and this, too, has the status of a local self-governing unit. Usually, a municipality of communities is an agglomeration of an urban settlement (town) and adjacent rural settlements (villages). According to the law, both types of local authority (a self-governing city and a municipality of communities) have the same status and the same powers.

27. Article 15 of the Code introduces a distinction between a municipality's own powers and its delegated powers. The latter should be delegated in accordance with the law or an agreement concluded under Georgian legislation, together with allocation of appropriate material and financial resources. Article 16 characterises a municipality's own powers as "exclusive powers" and lists them as including: spatial and territorial planning of the municipality and development of the appropriate engineering infrastructure;

issuance of construction permits and supervision of the construction; arrangement and maintenance of cemeteries; management of local motorways and regulation of traffic on local roads; provision of parking lots for vehicles and regulation of parking/stopping rules; issuance of permits for regular carriage of passengers within the municipality's administrative boundaries; organisation of municipal transport services for the population; cleaning of streets, parks, public gardens and other public areas, landscaping, and provision of external lighting; waste management; water supply (including the technical water supply)[4] and provision of a sewerage system; establishment and operation of pre-school and extramural educational institutions; regulation of street trading, exhibitions, markets and fairs; regulation of the placement of external advertising; determination of the rules for keeping pets, and solution of the issues relating to stray animals; development of appropriate infrastructure in local facilities for disabled persons, children and the elderly; and provision of a shelter for and registration of the homeless.

28. Other competences are delegated to municipalities from various levels of government by means of administrative agreements and through sectoral legislation. The Code of Local Self-Government clearly stipulates that delegated competences must be accompanied by relevant financial resources. As at the date of writing, municipalities have been given competences in military recruitment, sanitation and public health care, care and asylum of internally displaced persons (IDPs), development of highland areas and (in Tbilisi only) ambulance services.

29. Article 156 introduces a formula for determining the number of civil servants according to the population size of each municipality, whereas the previous Organic Law of Georgia on the Local Self-Government did not set any cap on the number of regular civil servants working for a municipality. Before the reform, there were approximately 14 000 employees in local self-governing units, while after the reform this number was reduced by 3 000. During the consultation procedure, the rapporteurs were informed that in spite of numerous statements of the Georgian government regarding the optimisation (that is reducing) of the bureaucracy, the number of public servants increased from 6.700 to 14.000 between 2007 and 2017, a significant growth having been observed during the pre-election periods.

30. According to the Code of Local Self-Government municipalities have two types of property: mandatory property – needed for execution of own competences and additional property – any legal property that is under the municipal ownership. However there are quite a number of physical infrastructures inherited from the soviet period that are frozen or are on the balance of the former agricultural collectives. The government of Georgia took a decision in 2017 that those properties should be transferred in the ownership of concerned municipalities. As for the agricultural land, the initial deadline was set as of 1 January 2017 but Georgian authorities faced with a huge problem of land registration and absence of proper land cadastre.

31. The Government ensured the delegation that the Ministry of Justice of Georgia, the Ministry of Regional Development and Infrastructure of Georgia, the Ministry of Economy and Sustainable Development of Georgia and the Ministry of Finances of Georgia will develop a timeline and procedure for transferring the agricultural land resources to municipalities and will submit to the Government for approval. Concerning municipal finance, pursuant to the previous organic law, a local self-governing unit's own revenues included a property tax, local fees and an equalisation transfer. Under the new Code, the financial resources of local self-governing units increased as a result of a "shared tax": a portion of the income tax paid by a person registered and employed in the territory of a self-governing unit remains with the same self-governing unit. In addition, along with special and targeted transfers, capital transfers are also made to a municipality's budget.

32. Georgia is a unitary State, which means it is a State governed as a single power in which the central government is ultimately supreme and any administrative divisions exercise only the powers that the central government chooses to delegate. Georgia is subdivided into nine regions (mkhare – although those are not

legally established regions but are supposed to correspond to the historical and geographical regions of Georgia), two autonomous republics and one city (k'alak'i):

- the nine regions are: Guria, Imereti, Kakheti, Kvemo Kartli, Mtskheta-Mtianeti, Racha-Lechkhumi, Samegrelo-Zemo Svaneti, Samtskhe-Javakheti and Shida Kartli;
- the two autonomous republics are the Autonomous Republic of Abkhazia (administrative centre: Sokhumi) and the Autonomous Republic of Adjara (administrative centre: Batumi);
- Tbilisi has a special status of the Capital City.

33. The 12 regional level administrations are subdivided into 64 self-governing municipalities: 59 self-governing communities and five self-governing cities. Regions are subdivided into districts that are called urban rayoni in Tbilisi, and Munitsipaliteti (municipalities) in the other administrative regions.

34. The regions each have a regional administration headed by a State commissioner – informally termed a governor – who is appointed by the Government of Georgia. There are no representative bodies at regional level and administration of the regions is the responsibility of the representative of the government. A region is not a self-governing unit: its function is rather to co-ordinate communication between several municipalities (with the exception of the municipalities of Adjara and that of Tbilisi) and the central government. The former legislation stipulated that legal supervision of municipal bodies was exercised by the State commissioner, but according to Article 130 of the Code such supervision is now exercised by the Prime Minister of Georgia.

35. A Regional Advisory Council (RAC) has been established in each region as an advisory body for municipalities and the RACs are headed by a "State trustee – Governor" (the term used in the Code – see Chapter XIX, Articles 146-149). The purpose of the RACs is to ensure that the interests of the municipality are represented and considered during the planning and implementation of development of the territory falling within the powers of the State trustee – Governor. An RAC is composed of the governor, the Gamgebelis/mayors of all relevant municipalities, and the chairperson and deputy chairperson of the Sakrebulo of the relevant municipalities. The first session of the RAC must be held within 60 days following the official declaration of the results of local elections. Sessions should take place at least once every three months and are convened and chaired by the State trustee – Governor. The RAC discusses projects and programmes to be carried out by the State in the relevant territory upon the recommendation of the State trustee – Governor, along with an estimate of the costs involved. It also elaborates the socio-economic development strategy for the territory falling within the powers of the State trustee – Governor.

36. In 2017 constitutional reform was pushed forward and the amended constitution includes a new Article 7, paragraph 4, in which the subsidiarity principle and the principle of commensurability are enshrined *"The citizens of Georgia shall regulate affairs of local importance through local self-governance in accordance with the legislation of Georgia. The delimitation of the powers of state authority and local self-government units shall be based on the principle of subsidiarity. The State shall ensure the compliance of the financial resources of a self-government unit with the powers of the self-government unit as defined by the organic law"*. The amended constitution again includes a special chapter on local self-government:

Chapter Nine. Local Self-Government

Article 74 - Local self-government bodies, boundaries, legal grounds

1. The citizens of Georgia shall regulate affairs of local importance through local self-government representative and executive bodies. A representative body shall be elected on the basis of universal, equal and direct suffrage, by secret ballot, for a term of five years. Local self-government executive bodies shall execute the decisions of representative bodies and shall be accountable to them.

2. A self-governing unit shall be a legal entity under public law. Decisions on the establishment and abolition of a self-governing unit, or the changing of its boundaries, shall be made by Parliament in consultation with the respective self-governing unit and on the recommendation of the Government.

3. Local self-governance shall be exercised under procedures established by the organic law.

Article 75 - Powers of self-governing units

1. The powers of a local self-governing unit shall be delimited from those of state authorities.

2. A self-governing unit shall have the right to make decisions on its own initiative on any issue which does not fall within the exclusive authority of state authorities or the Autonomous Republics and the decision of which is not excluded by law from the authority of a self-governing unit.

3. A self-governing unit shall exercise its powers independently and on its own responsibility, within the scope of the legislation of Georgia. The powers defined by the organic law shall be full and exclusive.

4. State authorities shall delegate powers to a self-governing unit on the basis of a legislative act or an agreement, and by transfer of relevant material and financial resources.

5. State authorities shall exercise legal supervision over the activities of self-governing bodies. The activities of self-governing units may be supervised in order to ensure the appropriateness of decisions only with respect to decisions made on the basis of delegated powers. State supervision shall be exercised in accordance with procedures established by the organic law, in compliance with the principle of proportionality.

Article 76 - Guarantees for local self-government

1. A self-governing unit shall have its own property and finances.

2. A self-governing unit shall independently establish its organisational structure in accordance with the organic law, and shall make decisions with regard to human resources in accordance with the organic law and legislation governing public service.

3. A self-governing unit may cooperate with other self-governing units to exercise its powers, in accordance with procedures established by the organic law. A self-governing unit may join associations of self-governing units in accordance with procedures established by the organic law.

4. State authorities shall make decisions on issues related to local self-government in consultation with self-governing units. The procedure for holding consultations shall be defined by the organic law.

5. Decisions made by self-government bodies within the scope of their authority shall be binding in the territory of the respective self-governing units.

3.2 Status of the capital city

37. The status of Tbilisi is defined in Article 2 paragraph 2 of the Constitution of Georgia: "Capital of Georgia - Tbilisi", and by the Code of Local Self-Government (Section III – Chapter VII "Status of the Capital of Georgia"). As a municipality with regional status, Tbilisi enjoys the powers granted to municipalities by the Code and in addition, Tbilisi has further competences in the areas of transport, communication, primary health care, emergency services and local development. Furthermore, the Code contains specific provisions concerning the representative and executive bodies of the city (Article 65).

38. The Tbilisi Sakrebulo is the representative body of the city (Chapter VIII of the Code – Articles 67 to 71). It is composed of 50 members, each elected for four years; 25 members are elected in the territory of local single-seat majoritarian electoral districts, and 25 through the proportional electoral system in the whole

territory of Tbilisi (that is, throughout the 10 administrative districts of the city) (Election Code of Georgia – Chapter XVII – Articles 155, paragraph 3). The Tbilisi Sakrebulo has the power to approve the city's budget and any changes to it and to set local taxes.

39. Tbilisi City Hall is a system of executive bodies (Chapter IX of the Code – Articles 72 to 79), which ensures the exercise of executive and administrative functions in the city. Tbilisi City Hall includes the following executive bodies:

- the Mayor of Tbilisi. The highest executive body and the Head of the Government of Tbilisi. He or she is directly elected for a term of four years and is responsible to the Tbilisi Sakrebulo. The mayor also appoints the Gamgebelis of the Tbilisi districts.
 - the Government of Tbilisi. A collegiate executive body that ensures the implementation of decisions taken by the Tbilisi Sakrebulo. The Tbilisi Government is composed of the Mayor of Tbilisi, the first deputy mayor (vice-mayor) and deputy mayors, the heads of the structural units of Tbilisi City Hall (with some restrictions), and the Gamgebelis of the city districts.
 - structural units. These ensure the management of the socio-economic fields falling within the powers of the Tbilisi Government and the operation of Tbilisi City Hall. The heads of the structural units are appointed by the mayor, with the consent of the Tbilisi Sakrebulo. They are responsible to the Mayor of Tbilisi (who also takes decisions on their removal from office).
- Gamgeobas (district councils). Tbilisi is divided into 10 administrative units (rayoni or districts), each of which is supposed to correspond to a historical neighbourhood in the city: Chugureti, Didube, Gldani, Isani, Krtsanisi, Mtatsminda, Nadzaladevi, Samgori, Saburtalo, and Vake. According to the Code (Article 66), an administrative unit of Tbilisi is not a self-governing unit. Each Gamgeoba in Tbilisi ensures the management of the district and co-ordinates the implementation of decisions by the Mayor of Tbilisi and the Government of Tbilisi.

40. Concerning sub-municipal governance, the Gamgeoba decides on matters of local (district level) importance. The fact that the mayor of a Gamgeoba (Gamgebeli) is a member of the Government of Tbilisi ensures that Gamgeobas are involved in discussions and decision-making processes at the municipal level. The Gamgeoba is the body closest to citizens and therefore the most competent body to identify their needs and to disseminate information regarding its work, on decisions taken by the municipality, and other relevant matters. Citizen Advisory Councils have also been created in the Gamgeobas and these allow citizens to take part in local public governance.

41. In 2018, a number of structural changes were carried out with a view to improving the overall effectiveness of Gamgeobas. These include a newly created division relating to district development, the goals of which are to foster citizen participation and co-creation, , and to develop economic infrastructure in the districts.

42. Each Gamgeoba develops a district development strategy based on the identified needs of the district and the challenges it faces. The strategy sets the priorities for the district and can be used when planning the following year's budget for the municipality.

43. In 2018, GEL 161.9 million of funding was allocated to Gamgeobas, which constitutes 18% of the municipal budget. These funds are allocated for operational activities and the implementation of programmes assigned by the Government of Tbilisi. The Gamgeobas prepare a report on their activities for the Government of Tbilisi, including details of how they spent the funds allocated to them (intended for the department of finance at Tbilisi City Hall). This report is submitted on a quarterly and an annual basis.

44. The total budget for 2018 for the Municipality of Tbilisi is GEL 896.9 million, only GEL 43.5 million of which are “special transfers” from the central government. The remainder is made up of “own revenues”. The largest share of the budget is an equalisation transfer (38.6%). Although this transfer is classified as “own revenue”, it is planned for by the Georgian Ministry of Finance. Administration of tax revenues (property and construction) is also undertaken by the ministry of finance and thus local self-governing units receive information and guidelines on how to plan taxation and their revenue policies from the ministry. The same goes for certain other sources of local revenues, such as gambling duties.

Table 1. Main components of the 2018 Tbilisi budget in GEL (millions):

Taxes	250.0
Grants	389.9
Of which equalisation transfer	345.8
Other revenues of which	170.8
Gambling duties	64.0
Disposal of waste	45.0
Decrease in non-financial assets	50.0
Decrease in financial assets	1.5
Change in balance	34.7
Total budget	896.9

45. Since Tbilisi is the largest local self-governing unit in the country and the economic “engine” of Georgia, its economic boundaries lay far beyond its administrative territory. Tbilisi started a metropolitan governance project in 2009 and since then co-operation takes place in a number of areas: for example, the water supply and sewerage system is managed jointly for the metropolitan area of Tbilisi, including the capital city of Tbilisi, the self-governing city of Rustavi and the municipalities of Mtskheta and Gardabani; another example is solid waste management – the waste landfill located in the Gardabani municipality serves the entire metropolitan area of Tbilisi.

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

46. The European Charter of Local Self-Government was ratified by the Georgian Parliament in 2004 (Article 47 of the constitution). According to Article 60, paragraph 4e), of the constitution, the question of the constitutionality of an international treaty can be raised on the basis of a claim by the President of Georgia or the Government of Georgia, or on a claim or submission by not less than one fifth of members of the parliament. In the case of such a claim, the Constitutional Court would have to consider the constitutionality of the international treaty.

47. The Code of Local Self-Government refers directly to the European Charter of Local Self-Government in Article 5 (“Legal grounds and reservations for exercising local self-government”). According to this fundamental norm, “legal grounds for exercising local self-government are the Constitution of Georgia, the

European Charter of Local Self-Government, treaties and international agreements of Georgia, this Law, other legislative and subordinate legislative acts of Georgia”.

3.4 Previous Congress reports and recommendations

48. A first recommendation on local and regional democracy in Georgia was issued in 2004 (Recommendation 157 (2004) on local and regional democracy in Georgia). In that recommendation, it was stated that the reform of local government was progressing slowly and that action was required in order to amend the law and fully comply with the principle of subsidiarity. It was also recommended that Georgia should ensure a clear division of powers and grant discretion in matters within municipal competence; that municipalities should be consulted in due time and in an appropriate manner on matters that concern them; and that they should also have the ability to take legal action against the State. Finally, a series of economic initiatives, including the adoption of the draft law on local government property, the drafting of the package on local government finance, and the effective introduction and increase of the tax-raising capacity of municipalities were also included in the recommendation.

49. In their 2013 Report on Local and Regional Democracy in Georgia (CG(24)10, 19 March 2013), the Congress rapporteurs concluded that Georgia had made considerable progress since 2004 and that the guiding principles of local democracy had been integrated into domestic legislation. The report took note, however, that the financial capacity of local authorities to generate their own resources and their discretion on the use of their finances remained low. Furthermore, it noted that supervision and auditing had suffered for the lack of qualified staff and, finally, that in several cases pressure had been put on opposition members. More specifically, Recommendation 334 (2013) on local and regional democracy in Georgia^[5] invited the Georgian authorities to:

- amend the constitution so that the principle of subsidiarity is specifically recognised;
- recognise the representative position of NALAG as a partner and furthermore involve a wide range of stakeholders representing local government, as well as their territorial, thematic and professional associations in the discussions and negotiations regarding local and regional autonomy;
- enhance the financial capacity of local governments, including the capacity to generate their own resources, using all available means including enlarging the tax base;
- improve the financial equalisation procedure (both as regards distribution and increasing the equalisation fund);
- introduce legal standards for auditing of local authorities and provide training to experts;
- ensure the autonomy and independence of local authorities and democratically elected representatives, so that national election results do not influence the local government representative structure;
- continue the regional development efforts, ensuring continuity of regional development strategy;
- consider the issue of direct elections for all mayors, in light of the Tbilisi experience;
- consider signing and ratifying Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority and ratifying the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.

50. In addition, in 2015, the Government of Georgia entered into a post monitoring dialogue with the Congress, and signed the roadmap aimed at implementing the Congress recommendations, notably: to incorporate the subsidiarity principle in the Constitution, to continue to work to improve the financial situation of local self-government bodies (allocate extra resources to local self-government bodies, to bring changes to the

equalisation formula and introduce municipal benchmarking), to make the consultation process binding with local self-government bodies, and to ratify the Articles 6-4 and 9-6 of the European Charter of Local Self-Government that were not ratified by Georgia back in 2004.

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

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

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

51. The new Article 7, paragraph 4, of the Constitution of Georgia provides that:

the citizens of Georgia shall regulate the affairs of local importance through local self-government in accordance with the legislation of Georgia. Delineation of competence between the state authorities and self-governing units is based on the principle of subsidiarity. The State ensures the correspondence of financial resources of self-governing units with its competences determined by organic law.

52. As already shown in several parts of this report, the principle of local self-government is recognised both in the Constitution of Georgia and in ordinary legislation and, more specifically, in the Code of Local Self-Government. The existence of legal acts that are incompatible with the Code and the constitution remains a serious matter of concern in domestic legislation. In April 2016, the parliament received a set of draft changes which concerned 174 pieces of legislation. At its spring session in 2016, parliament adopted the changes at first reading but then the discussion of the package stopped and this process has not yet been revived. During the consultation procedure, the Government of Georgia informed the delegation that the process will continue in the context of decentralisation.

53. In spite of problems with previous sectoral legislation, it is obvious, however, that the principle of local self-government is recognised both at the level of the constitution and of the legislation and that Georgia fully complies with Article 2 of the Charter.

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

54. According to Article 7, paragraph 4, of the constitution, “the citizens of Georgia shall regulate the affairs of local importance through local self-government in accordance with the legislation of Georgia”.

55. Georgian municipalities have been given additional responsibilities in recent years, yet the share of local government in public affairs is still quite limited. It could be substantially increased, however, especially if social services, including primary and secondary education, together with health services, were decentralised and devolved to local government, and it seems that Georgian authorities are already moving in this direction.

56. Georgia therefore complies with Article 3, paragraph 1, of the Charter. However, the rapporteurs encourage the Georgian authorities to move forward with decentralisation and devolution of powers to local authorities.

4.2.2 Article 3.2

57. According to Article 74, paragraph 1, of the constitution, "The citizens of Georgia shall regulate affairs of local importance through local self-government representative and executive bodies. A representative body shall be elected on the basis of universal, equal and direct suffrage, by secret ballot, for a term of five years. Local self-government executive bodies shall execute the decisions of representative bodies and shall be accountable to them".

58. The appointment of deputy mayors by the mayor without the consent of the Sakrebulo seems to interrupt the line of accountability. Such a unilateral and absolute power of the mayor weakens the position of the representative body (with the exception of Tbilisi). NALAG proposed pertinent changes in the Code in 2017, suggesting the introduction of the Tbilisi model (where vice-mayors and heads of departments are nominated by the mayor and approved by the Sakrebulo) in all municipalities. This recommendation has been submitted to the ministry of regional development and infrastructure and the parliament, but final decisions are still pending.

59. After July 2015, when the Code introduced new mechanisms for citizen participation in the self-governance process, municipalities began enacting relevant normative documents. The number of citizens using their new rights was low in the second half of 2015, but the process speeded up in 2016 and was augmented by the fact that the ministry of regional development and infrastructure started drafting relevant guidelines.

60. Civil society also began getting involved in the awareness-raising process. Furthermore, the heads of several municipalities took the initiative to boost the use of the new mechanisms for citizen participation. This is particularly true for such forms of participation as general assemblies in settlements, and councils of civil advisors (Articles 85.1 and 86.1 of the Code). According to data from the ministry of regional development and infrastructure as at 1 January 2017:

- general assemblies were convened in 415 villages (which account for 11.78% of all the village settlements in Georgia). Village elects were chosen at about 10% of those meetings;
- in 2016, citizens filed 55 petitions with local self-governing units; this figure exceeds the total number of petitions filed during the last decade;
- councils of civil advisors were set up in all municipalities and in all districts of Tbilisi.

61. Concerning the councils of civil advisors, according to Article 86.1, paragraph 1, of the Code, a council of civil advisors is a deliberative body of a municipal council and is composed of representatives of entrepreneurial legal entities, non-governmental organisations and representatives of the municipal population. According to the Code, "The Gamgebeli/Mayor of a municipality shall be obliged to submit for discussion to the council of civil advisors, [a body] approved by him/her, a draft municipal budget, documents relating to the municipality spatial planning, proposals on giving names to the municipality geographical features, as well as other significant draft administrative-legal acts, and infrastructural and social projects. Other powers of the council of civil advisors approved by the Gamgebeli/Mayor and the rules of its operation shall be determined by the statute of the council of civil advisors, which shall be approved by the municipality Gamgebeli/Mayor. (Article 86-3, of the Code).

62. The level of activity varies among municipalities. Cities/towns and rural communities which were active in lodging citizen petitions were the cities of Batumi and Ozurgeti. Regrettably, there are no precise statistical data about citizen participation throughout 2017. In general, it is safe to say the process continued even more

actively.[6] Some local leaders used their legal powers positively to initiate additional mechanisms of citizen participation. A relevant example is the municipality of Marneuli, which implemented participatory budgeting (the so-called Brazilian or Sopot model) in 2015-17. Other examples include municipalities (such as Gori, Zugdidi, Lagodekhi, etc.) where electronic petition systems have been put in place. In the municipality of Gori, acting on its own initiative, the local government began publishing more documents.

63. The regrettable aspect of the process is that the general assemblies and the councils of civil advisors as advisory bodies have no real power in practice. Since forms of citizen participation carry only consultative power, the level of participation dropped once citizens saw that they were not making an actual difference. In addition to a lack of real rights, there is also a technical issue related to organising meetings: a general assembly can take decisions if 20% of registered voters in the settlement attend; however, in practice, it is almost impossible to reach this number of attendees, both in medium-sized and large settlements.

64. The Council of Europe has actively supported public policy for citizen participation in Georgia, also through a project that finished in December 2017 and gave rise to:

- the *Handbook on Transparency and Citizen Participation in Georgia* (English–Georgian): it aims to support local and regional authorities in their efforts to make communities more open, ethical and citizen-oriented. It outlines the legislative frameworks in Georgia and provides practical guidance for preventing corruption risks and implementing transparency and citizen participation mechanisms.

- the study on *Institutionalised citizen participation: an assessment of existing mechanisms in Georgia* which was undertaken to support NALAG in advocating for improvements in the consistency and coherence of legislative frameworks for citizen participation.

65. Further improvements are being considered under the new decentralisation strategy, for which a process of public consultation was launched in January 2018. The Government of Georgia presented the concept of the new decentralisation strategy in early 2018. Citizen participation will be fostered within this strategy and it is currently being debated whether to give legal status to online petitions. For the time being, there is a new online governmental portal[7] through which citizens can register petitions to central and/or local governments.

66. Today, Georgian legislation includes provisions on citizens' participation in local affairs which originated in the Additional Protocol to the European Charter on the right to participate in the affairs of a local authority. As there is no legal or conceptual inconsistency between the additional protocol and the Georgian legal framework, it seems that ratification of the additional protocol is only facing technical obstacles, and Georgian interlocutors (including the chairman of the parliament) confirmed their willingness to ratify it. Recently, the Committee on Regional Policy and Local Self-Governance of the Parliament of Georgia started a public debate on the ratification of this protocol, and positive moves in this direction are expected in the very near future, possibly before the end of 2018.

67. In general, Georgia complies with Article 3, paragraph 2, of the Charter. However, it is recommended that a new provision be introduced into the Code concerning the approval of the appointment of deputy mayors by the Sakrebulo, as is already the case in Tbilisi. Moreover, the Georgian authorities should be encouraged to proceed with the ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

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

68. The new Code of Local Self-Government (2014) provided for additional responsibilities of municipalities, but at the same time, fire safety and rescue functions were removed from their fields of competence. The duty to ensure the operation of agricultural information and advice centres, which had been delegated to them in 2012, was also taken away. Nowadays, the Georgian Government is considering further steps towards decentralisation. The ministry of education and science has since come forward with an initiative to delegate the administration of public schools (including construction, repairs, equipment, school transport, etc.) to local self-governing units.

69. In March 2018, the prime minister and the speaker of the parliament announced in parliament that a reform strategy would be presented to the public during the summer of 2018 and be adopted by the end of that year. Emphasis is now being made on delegating more powers, and the first stage of the reform is supposed to be completed by 2025. The ministry of regional development and infrastructure of Georgia is working on a project for decentralisation and good governance strategy. The representatives of the respective government agencies and representatives of the relevant committee of the Georgian Parliament, together with experts from international and non-governmental organisations, are involved in the preparation of the draft strategy, which is planned to take place, along with the launch of a wide range of discussion forums, by the end of 2018.

70. In general, the Georgian legal framework for local self-government has considerably improved since 2014. Local authority competences have been strictly differentiated from the mandate of central government and the municipalities have obtained the right to claim any competence that has not been allocated to any other level of government (see below).

71. Georgia therefore fully complies with Article 4, paragraph 1, of the Charter.

4.3.2 Article 4.2

72. According to Article 75, paragraphs 2 and 3, of the constitution, a self-governing unit shall:

2. ... have the right to make decisions on its own initiative on any issue which does not fall within the exclusive authority of state authorities or the Autonomous Republics and the decision of which is not excluded by law from the authority of a self-governing unit.

3. ... exercise its powers independently and on its own responsibility, within the scope of the legislation of Georgia. The powers defined by the organic law shall be full and exclusive.

73. Besides these constitutional provisions, a general clause on municipal competence has been introduced, and thus the principles of own responsibility and discretion to exercise initiative in local affairs are enshrined in the Code.

74. Georgia therefore complies with Article 4, paragraph 2, of the Charter.

4.3.3 Article 4.3

75. The principle of subsidiarity is enshrined in the Constitution of Georgia, Article 7, paragraph 4: "delineation of competence between the state authorities and self-governing units is based on the principle of subsidiarity", while the Code adopted in 2014 already clearly stipulated that public competences are to be executed by the authorities that are the closest to citizens. Based on this provision, a number of competences (such as the supply of water and the collection of solid waste) were transferred to municipalities; the Government of Georgia has since also delegated competences in secondary education to municipalities.

76. Georgia therefore complies with Article 4, paragraph 3, of the Charter.

4.3.4 Article 4.4

77. According to Article 75, paragraph 3, of the constitution, "[o]wn powers defined by the organic law shall be full and exclusive". This provision is nearly identical to the first sentence of Article 4, paragraph 4, of the Charter.

78. In practice, however, some competences that have been transferred to municipalities (for example, water supply) are not full and exclusive, and current public services are provided by enterprises that are under the ownership of the central government. The main cause of such a lack of clarity regarding devolved competences is a lack of coherence between the local government code and the sectoral legislation, but also inconsistency.

79. Water supply is a topical example. In 2017, centralised water supply systems were available to 72% of the population (compared with 68% in 2013). Municipalities were allocated the competence to supply water in 2014. However, the provision of the water supply is realised through outsourcing and public-private partnerships. In the case of the capital city, Tbilisi, the city of Rustavi and the municipality of Mtskheta, the water supply is provided by a commercial entity, Georgian Water and Power Ltd., while for the vast majority of Georgian municipalities, the water supply is provided by the United Water Supply Company of Georgia, a commercial entity that belongs to the central government and serves up to 57 local self-governing units. The municipalities are not permitted to intervene in monitoring the quality of State company-provided services. A different model is applied in the Autonomous Republic of Adjara; here the supply of water to the population is provided by companies that are under the ownership of municipalities. Recently, six municipalities in the Autonomous Republic of Adjara initiated a process of consolidation of these small companies into one regional company.

80. In 2016, the ministry of regional development and infrastructure prepared a package of legislative changes for harmonisation of sectoral legislation with the Code. This package was adopted at first reading in the Parliament of Georgia and is awaiting adoption following its second and third readings.

81. In view of this situation, it is clear that further steps should be implemented in order to fully comply with Article 4, paragraph 4, of the Charter. The rapporteurs are therefore of the opinion that at this stage Georgia partially complies with the above mentioned provision.

4.3.5 Article 4.5

82. According to Article 134.1 of the Code, a sectoral supervision authority can also provide “recommendatory instructions”, but these should not restrict the right of a municipality to ensure the exercise of its delegated powers, taking into consideration local conditions.

83. In view of this legislation, it can be confirmed that Georgia complies with Article 4, paragraph 5, of the Charter.

4.3.6 Article 4.6

84. According to Article 76, paragraph 4, of the constitution, “state authorities shall make decisions on issues related to local self-government in consultation with self-governing units. The rule for consultations shall be defined by the organic law”.

85. According to Article 7, paragraph 3, of the Code, State authorities are obliged to hold preliminary consultations with non-entrepreneurial (non-commercial) legal entities that comprise more than half of the country's municipalities, before making decisions on issues relating to the powers of a municipality. One such non-profit (non-commercial) legal entity is NALAG, which unites all local self-governing units in Georgia. All draft laws relating to local self-government are submitted to NALAG for comments. In accordance with parliament regulations, all comments must be attached to the draft law and submitted to the parliament.

86. Georgia fully complies with Article 4, paragraph 6, of the Charter and this article could therefore be ratified by the Georgian authorities, as was confirmed by interlocutors during the monitoring visit to Georgia.

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.

87. The Georgian Code of Local Self-Government includes special provisions for consultation with municipalities and the local population in cases of territorial reform (Articles 10, 11, 12 and 13). In addition, Article 74, paragraph 2, of the constitution provides that “decisions on the establishment and abolition of a self-governing unit, or the changing of its boundaries, shall be made by Parliament in consultation with the respective self-governing unit and on the recommendation of the Government”. It therefore seems to the rapporteurs that Georgia is able to ratify the Article 5 of the Charter and this was confirmed by all interlocutors of the Congress delegation during the monitoring visit, including the chairman of the parliament.

88. Concerning the implementation of a consultation procedure before the mergers of 2017, when 14 municipalities were merged into seven cities (Gori, Zugdidi, Ozurgeti, Telavi, Mtskheta, Akhal'tsikhe, Ambrolauri), information provided by Georgian experts indicated that the ministry of regional development and infrastructure had organised a policy meeting with NALAG in March 2017 and presented a report on the pilot territorial reform implemented in 2014, pointing out that separation of urban centres from their rural areas was not in the interests of efficiency and that the government had plans to reverse the 2014 territorial reform. The official position of NALAG was that: a) there should be consultation with municipalities before any decisions are taken; b) re-merging of the seven cities with their adjacent rural communities should be approved by locally elected bodies of each respective municipality; and c) in no cases should funding of merged municipalities (State transfers) be less than the cumulative sum of funds of merged municipalities in the previous fiscal year. The ministry agreed with NALAG's proposals and asked NALAG to provide logistical support for the organisation of consultations with Georgian municipalities.

89. In April-May 2017, NALAG organised 10 consultation meetings in all regions of Georgia. Those meetings were attended by mayors and heads of local councils, representatives of the central government, and independent experts and they were also open for public participation. The agendas of those meetings included three topics: a) re-amalgamation of seven cities and seven municipalities; b) recommendations for decentralisation of State powers; and c) recommendations for financial decentralisation. In total, 250 local government representatives took part in these consultation meetings. NALAG prepared a verbatim report of the meetings and developed a set of recommendations based on that report. Both documents were submitted to the ministry. The verbatim report showed that the absolute majority of local government representatives supported the re-amalgamation of the affected municipalities.

90. The ministry of regional development and infrastructure then officially submitted a proposal for amalgamation to the following local government units: the city and the municipality of Gori, the city and the municipality of Telavi, the city and the municipality of Akhaltsikhe, the city and the municipality of Ozurgeti, the city and the municipality of Mtskheta, the city and the municipality of Zugdidi, and the city and the municipality of Ambrolauri. Local councils of all 14 local government units organised open sessions in which to discuss the proposals on amalgamation, which were subsequently approved. Representatives of the NGO coalition that had strongly opposed the proposal for re-amalgamation also attended these meetings.

91. Following a final session of the executive board in June 2017, NALAG decided to support territorial consolidation of the 14 municipalities. Subsequently, a draft legislative proposal, along with a verbatim report of regional consultation meetings that had taken place, was sent to parliament for approval. Laws on this territorial reform were adopted after three readings. The delegation has been informed that, although the President of Georgia vetoed the bills on the ground that rolling back this process seemed completely unsubstantiated and unacceptable, and that taking away the self-governing status of seven towns would halt the development and strengthening of self-governance in Georgia, the Parliament overrode the President's veto on 26 July 2017.

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*

92. According to Article 76, paragraph 2, of the constitution, “a self-governing unit shall independently establish its organisational structure in accordance with the organic law, and shall make decisions with regard to human resources in accordance with the organic law and legislation governing public service”. According to the Code, Georgian municipalities have the right to determine their internal administrative structure in accordance with Georgian legislation. In general, the basic internal structure of a local government unit is defined by the Code, but municipalities are able to form administrative units and structural divisions. Statutes and rules of procedure for internal departments and services are adopted by the municipal councils.

93. The Code of Local Self-Government (Article 156) indicates the specific formula for calculation of the number of employees per municipality – a formula based mainly on the size of the population. However, initial experiences with the enforcement of this legislation have shown that it is quite difficult to use one formula for

all municipalities in view of the very big differences between them and the specific needs of municipalities in mountainous or other areas. Several changes have been made in order to give more discretion to municipalities and to achieve a more flexible formula.

94. Municipalities have the right to establish non-commercial (non-profit) and commercial (Ltd), enterprises for the provision of municipal and social services. As yet, there is no regulation defining how many such enterprises can be established in each municipality. According to local experts, this possibility is being misused as there is a huge number of non-commercial entities, thus leading to increased costs. In recent years the number of non-commercial entities established by the municipalities has nearly doubled and this has taken place in order to provide employment. Any entity that receives funding from municipal budgets is open for monitoring by the local council; the true reason for this spectacular increase in the number of non-commercial entities is that their employees are not subject to the law on civil service employment. As a result, open recruitment competitions are not required in order to hire staff, which makes these jobs easily accessible to political supporters.

95. In general, Georgia complies with Article 6, paragraph 1, of the Charter, but there are some concerns about the formula for the calculation of the number of employees in municipalities, which is restricting their organisational autonomy. In principle, such restrictions do not conflict with the Charter, but they should be flexible and take into consideration the big differences between municipalities. According to the Charter, local authorities should be able to determine their structures (including the number of posts of civil servants) "in order to adapt them to local needs" and this is not possible if the formula for the calculation of the number of employees is formalistic and basically oriented on the size of the population.

4.5.2 *Article 6.2*

96. According to Article 76, paragraph 2, of the constitution, "a self-governing unit shall independently establish its organisational structure in accordance with the organic law, and shall make decisions with regard to human resources in accordance with the organic law and legislation governing public service".

97. Staff of the Gamgeoba (city hall) are appointed by the Gamgebeli/mayor on the basis of open competition. Staff of the Sakrebulo (council) are appointed by the head of the council (chairperson). Appointment and dismissal of municipal staff are regulated by the Law of Georgia on Public Service.

98. Salaries of civil servants in Georgia are regulated by the Law of Georgia on the Remuneration in Public Institution as referred to in the Law of Georgia on Public Service; this legislation uses special coefficients for to calculate the salary of each category of municipal employee. The law indicates 12 categories of civil servant, and municipalities are free to assign a relevant category to each employee who has passed procedure. According to several interlocutors during the Congress monitoring visit, salary schemes in Georgian municipalities are highly competitive in the domestic labour market. According to NALAG, however, a lack of adequate human resources at local level is the biggest problem. Moreover there are a number of municipal sectors such as spatial planning, urban design and urban transport management, where the shortage of qualified personnel is evident, even in Tbilisi. Aiming at raising the level of qualifications of civil servants, Article 101, paragraph 2, of the Code now obliges municipalities to spend at least 1% of the total amount of budgetary allocations intended for remuneration on professional development of their civil servants.

99. As already mentioned, apart from civil servants, local government entities employ many people on an individual contract basis. Both limited liability companies and non-profit entities serve as "shelters" for retired civil servants and other people having close ties with local government officials. As at 1 January 2017, local governments (not including Tbilisi) employed 11 913 individuals directly and an additional 19 825 individuals through non-profit entities, making a total of 31 738 employees.[8] The Government proposed legislation

aiming at regulating the number of non-commercial entities per municipality and introducing a limit on the amount of administrative costs. This initiative, according to local experts, is still under consideration of the Government.

100. In general, municipalities have the power to recruit and select the required staff, evaluate their performance and offer training and re-training opportunities. Contracting is easily possible within the reasonable procedures stipulated in Georgian law. The procedures (competitions) for selection are prescribed by law and enforced by the Civil Service Bureau. The scale and limits of remuneration are set by law, but municipalities have the power to decide on the amount of remuneration within these limits. Municipalities cannot increase their budget for employee salaries without the consent of the Ministry of Finance of Georgia (according to changes made in 2018 to the Law of Georgia on Remuneration in Public Institutions).

101. In spite of such restrictions (which can be found in many European countries), it can be stated that Georgia complies with Article 6, paragraph 2, of the Charter, and that this provision could be ratified by the Georgian authorities.

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*

102. Local elected representatives have the right and the possibility to exercise their mandate freely and unconditionally. Members of the Sakrebulo (councils) have the right to monitor the activities of municipalities and to organise hearings on reports provided by the mayor and heads of departments. Local elected representatives are entitled to discuss, adopt and monitor local budgets; they also have the right to request any information on the spending of public funds by local executive bodies and entities subordinated to the municipal administration.

103. On 23 March 2018, Mr Irakli Nadiradze, Chairperson of the faction “United National Movement” (UNM) of the Tbilisi City Municipal Assembly, addressed a complaint to the Congress with regard to the alleged violations of local self-government principles in Tbilisi Municipal Assembly. He claimed that the ruling party denied the rights which are supposed to be legally attributed to a member and a faction of the municipality by several legal acts, in such areas as the access to certain information, the modalities of convening and holding of sessions.

104. Indeed, during the visit in Georgia the rapporteurs met with local elected representatives from the opposition and some interlocutors expressed complaints that members of the municipal assemblies are being denied access to information. However, it seems that these are rather exceptional cases and in most instances members of opposition parties do get information on local budgets’ spending, public procurement and privatisation. This is indicated through the fact that the opposition has reported cases on misuse of public funds on television and in printed media.

105. An interesting court case was the case of “Ms Sharashenidze against the Ozurgeti City Municipality” when a member of Ozurgeti city council from an opposition party, applied to the civil court of Ozurgeti accusing the mayor of City of preventing her from having access to information on public procurement. She claimed that the Mayor of the city refused to provide her with the copies of procurement contracts because they would include a vast number of pages and the city could not spend so much money on their copying. The Civil Court of Ozurgeti has recognised the mayor’s decision as legal. Subsequently, Ms Sharashenidze applied to the Court of Appeal in Kutaisi. The court of appeal obliged the city municipality to provide to the applicant council member a workplace equipped with a desktop computer or an internet connection for a reasonable period of time in order to enable her to have access to electronic copies of all procurement contracts.

106. In this respect it should be noted that most of the local authorities and experts met by the delegation have indeed underlined that Georgian legislation includes sufficient remedies in order to ensure the free access by members of local deliberative bodies to legally required information.

107. Nevertheless, the rapporteurs believe that capacity building programmes for local council members to enhance the use of available legal instruments, notably in remote municipalities, would help them to better protect their rights as local elected representatives and thus would positively contribute to strengthening the role of opposition parties in local self-government.

108. Unfortunately, in many member States of the Council of Europe, municipalities shall cope with sometimes difficult relationships among their local elected representatives, notably between the representatives of the ruling parties and the opposition. The number of complaints addressed to the Monitoring Committee in this respect has been gradually increasing recently which shows that this issue is becoming a problematic trend for local self-government.

109. Following the 2012 parliamentary election, negative developments took place in a number of municipalities and some locally elected representatives came under heavy pressure. However, it seems that these instances were the result of the transfer of power and that they were rather exceptional cases. According to NALAG, the Government of Georgia took specific steps to prevent national political interference in local affairs. More specifically, the Georgian criminal code has since been amended and tougher penalties have been introduced for violent interference in the operation of a local administration. In addition, the minister of justice has established a specific interministerial commission with the tasks of overseeing election procedures and prevention of violations during electoral and post-electoral periods. It is worth mentioning that all international observation missions have evaluated the work of this commission positively. After the 2014 local government reform, national political influence upon local authorities has been decisively pushed back. The Code of Local Self-Government clearly defines the mandate, role and responsibility of local elected representatives and provides specific legal measures to guarantee free and full execution of the mandates of local elected representatives.

110. During the monitoring visit and following several discussions, and in spite of some protests from opposition parties, the rapporteurs’ general impression was that Georgian authorities have tried to respond to the recommendations in Recommendation 334 (2013) on local and regional democracy in Georgia, and that Georgia generally complies with Article 7, Paragraph 1, of the Charter.

4.6.2 *Article 7.2*

111. The head of Sakrebulo and his or her deputies, as well as the heads of committees and fractions enjoy the status of local elected public officials and as such they receive allowances for the execution of their mandates. Those members of local councils who do not hold official administrative positions receive

compensation for the execution of their mandate, the amount varying between municipalities and being dependent on the size of local budgets; it is higher in big cities and lower in small municipalities with limited own revenues.

112. Georgia therefore complies with Article 7, paragraph 2, of the Charter.

4.6.3 Article 7.3

113. Functions and activities that are incompatible with the work of a local council member are laid down in the Code of Local Self-Government (Articles 39, 42, 55 and 58) and other relevant legislation.

114. Georgia therefore complies with Article 7, paragraph 3, of the Charter.

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

115. With the new Code of Local Self-Government, the office of prime minister replaced State governors and the ministry of justice as the new supervising authority of municipal bodies. Putting a single body in charge of oversight instead of having two bodies supervise the same issue is in line with Council of Europe Recommendation No. R (98) 12 of the Committee of Ministers to member States on supervision of local authorities' action. However, a number of questions arise as to performance of the legal oversight function by a prime minister: in none of the other Council of Europe member States is a prime minister directly responsible for legal supervision of local authorities. There are also several formal difficulties in the current system: the Code in force does not allow the prime minister to delegate his or her legal oversight function, which means that, formally speaking, legal findings of an oversight commission have to be endorsed by the prime minister, which is not very easy in practical terms. The existing practice is that legal findings are signed by a chief of the relevant department in the government administration.

116. In most countries, the function of State supervision over local authorities is vested in a government ministry with responsibility for local self-government policy. The rationale is that such a ministry would have the expertise to perform this demanding function. The system that is currently in place in Georgia could cause overlapping of certain functions in the executive branch of the government, since ministries and administrations would also supervise municipalities in performing delegated tasks. In order to optimise the existing legal oversight system, it is being considered whether or not to give this function back to State trustees – Governors, but interlocutors of the Congress delegation were sceptical, since the record of informal control that State trustees – Governors used to exercise over municipal activities has not yet been forgotten.

117. Financial control and audit of local authorities is undertaken by the State Audit Office (SAO), which conducts audits of municipalities according to annual plans and publishes audit reports to inform the public. The SAO organises training for its staff and develops new methodologies for auditing of local authorities in co-operation with international partners. As a result, it seems that the suggestion in Recommendation 334 (2013) on local and regional democracy in Georgia to improve training and provide standards for auditing has been followed. Today, audits at the local level are performed by both internal and external auditors. External audits are carried out by the SAO (notably the local self-government entities audit department; the Audit Department of the Autonomous Republic of Adjara and the Audit Department of the Autonomous Republic of Abkhazia, which are the structural entities of the SAO), and independent auditors. More specifically, audit reform in Georgia included: i) the Law of Georgia on Public Internal Financial Control; ii) standards on internal audits; and iii) the central harmonisation unit (CHU) that was established by the ministry of finance to co-ordinate and harmonise the creation of internal audit and financial management and control systems in the public sector, including development of and updates to relevant standards and methodologies. According to the legislation, internal audit departments have been set up in municipalities as separate independent units.

118. Finally, it should be mentioned that the Public Defender of Georgia is also mandated to monitor local self-governing authorities and also to examine the statements and appeals of both Georgian and foreign citizens and stateless persons, legal entities under private law, and political and religious associations regarding actions or acts of local self-governing authorities that violate the rights and freedoms defined in the laws and Constitution of Georgia, and in treaties and international agreements to which Georgia is a party. In her reports, the public defender has pointed out the most frequent shortcomings in this area by municipal administrations, such as a lack of clear reasoning when taking decisions, a lack of impartiality combined with discriminatory practices, and a lack of awareness for persons with disabilities, etc.

119. The rapporteurs concluded that Georgia complies with Article 8, paragraph 1, of the Charter since supervision procedures are described in law and there has been no systematic violation of these procedures in recent times.

4.7.2 *Article 8.2*

120. According to Article 75, paragraph 5, of the constitution, “the State authorities shall exercise legal supervision over the activities of self-governing bodies. The activities of self-governing units may be supervised in order to ensure the appropriateness of decisions only with respect to decisions made on the basis of delegated powers. State supervision shall be exercised in accordance with procedures established by the organic law, in compliance with the principle of proportionality”.

121. The Code of Local Self-Government (Article 129-1) refers to two types of supervision: legal supervision and sectoral supervision. According to this article, “State supervision is an activity carried out by executive authorities that is intended to ensure the lawfulness of the activities of municipal bodies, and proper exercise of delegated powers.”

122. In order to examine the expediency of activities carried out by local self-governing bodies (officials) within the sphere of their delegated competences, the State supervisory authority is entitled to request from the respective local self-governing body (official) submission of any official documents, including legal acts promulgated by the local self-governing body/official, minutes of meetings and sittings, materials relating to administrative proceedings and financial documents, etc.

123. A municipality may appeal the legality of a decision by the State supervising authority on annulment of an individual normative act due to its inappropriateness, as prescribed by law (Article 136 of the Code). The supervising authority may, after consulting with and notifying the officials of the appropriate self-governing

bodies, decide to implement appropriate measures to suspend and/or annul the normative acts concerned. Such a decision on the implementation of measures to remove and prevent damage may be appealed to a court as prescribed by law.

124. In order to ensure maximum protection for self-governing units, the Code of Local Self-Government has introduced a legal consultation mechanism: each self-governing body may, on its own initiative, submit a request for legal consultation on a draft normative act to the supervisory authority if it is not sure whether this act fully complies with Georgian law (Article 137 of the Code). The supervisory authority is obliged to provide a legal opinion, which is only recommendatory, on the submitted draft. Thus, local authorities and officials can adopt their legal acts independently and on their own responsibility.

125. Provisions of the Code of Local Self-Government are in accordance with the Charter. Controls regarding legality and appropriateness are permitted only for decisions made on the basis of delegated powers. Georgia therefore complies with Article 8, paragraph 2, of the Charter.

4.7.3 Article 8.3

126. According to Article 75, paragraph 5, of in the constitution, state supervision shall be exercised in accordance with the rule prescribed by the Organic law, in adherence to the principle of proportionality.

127. In principle, the Georgian central government has no substitutive power over local government, but it can introduce direct State rule in cases where the territorial integrity of the country is concerned, if a local council ceases to function due to the permanent absence of 50% of its members and if the local budget for the current financial year is not adopted during the first three months of the fiscal year. Moreover, according to Article 133, paragraph 2c), of the Code, a sectoral supervision authority may substitute the local self-government when performing state supervision over the exercise of delegated powers. The conditions for the exercise of substitutive power and other means and measures of supervision are described in law and local authorities also have the possibility to appeal decisions of the State supervisory authority to a court (Article 135, paragraph 8, of the Code).

128. Georgia therefore complies with Article 8, paragraph 3, of the Charter.

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.
- 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.

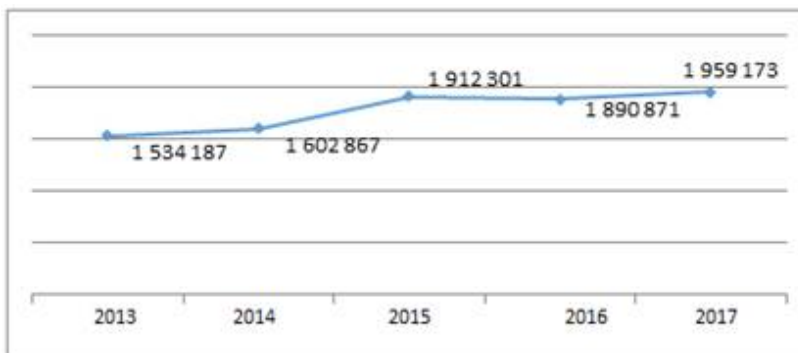
- 7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
- 8 For the purpose of borrowing for capital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

4.8.1 Article 9.1

129. According to the legislation, local government revenue includes own receipts and transferred funds. Own receipts include local taxes and duties, an equalisation grant and other revenues provided to the local self-governing unit. The transferred funds include capital transfers, special transfers and targeted transfers, loans and the grants obtained according to the Law of Georgia on Grants. . The legislation provides the right of self-governing units within their powers, to use their own receipts at their discretion.

130. There has been an increase in municipalities' budgetary revenues since 2013 (see Chart 1 below), which is a positive development.

Chart 1. Budget revenue of municipalities 2013-17 in GEL (millions)



Source: MoF of Georgia

131. However, a large part of these revenues continues to come from the central authorities by means of transfers. Between 2013 and 2017, the share of grants received from the central budget made up 49.7-47.7% of total revenues. Today, the main legal debate concerns the Budget Code of Georgia. Since 2016, the Government of Georgia has begun the decentralisation of property income tax (PIT). At the initial stage of the reform, the PIT paid by individual entrepreneurs was assigned to local budgets. Moreover, according to a new reform strategy announced in March 2018 by the prime minister and the speaker of the parliament, local budgets should amount to at least 7% of gross domestic product (GDP) (considered to be a minimum threshold based on practice in other European countries) before the end of the upcoming reform period 2018-25. According to local interlocutors, this strategy requires changes to the Budget Code of Georgia and to sectoral legislation.

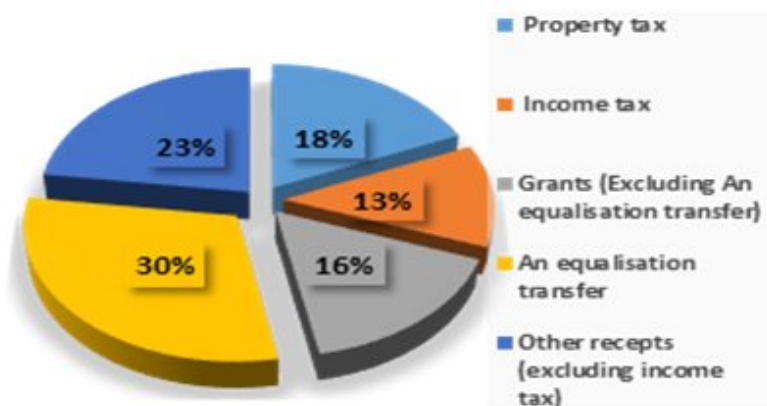
132. In 2017, municipalities received total tax revenues amounting to GEL 559.5 million, which is GEL 269 million more than in 2015. The increase was caused by amendments made to the Georgian Budgetary Code. In particular, since 1 January 2016, the following taxes provide revenue for the budgets of local authorities: income tax paid by private individual entrepreneurs; income tax paid by non-residents (income from property sales); income tax paid by natural persons on the surplus from the sale of material assets; income tax payable by natural persons on gifted property; income tax paid by natural persons on inherited property; and income tax paid by natural persons on rented property. Municipalities' revenues from the various types of income tax described above amounted to GEL 245.4 million in 2016 and decreased to GEL 162.3 million in 2017. Because revenue from these taxes was passed on to municipalities, local authorities have received

smaller equalisation transfers from the State central budget as a result. In 2015, equalisation transfers from the central State budget amounted to GEL 834.6 million, while this figure decreased by GEL 234.9 million in 2016 and by GEL 179.5 million in 2017.[9]

133. Among the existing tax revenues of municipalities, property tax has played an important role as it has brought increased revenue for local budgets. The amount of property tax revenues amounted to GEL 397.2 million in 2017, which is GEL 33.8 million more than in 2016 and GEL 107.6 million more than in 2015. Besides this growing trend, there is room for increasing tax revenues even further. There are, however, significant obstacles that would first have to be removed, such as existing tax privileges for certain categories (for example, owners of agricultural land who owned their land prior to 2015 and natural persons whose income is less than GEL 40 000 per year are exempt from paying property tax) and other problematic regulations (for example, the value of real estate on which property tax is paid is determined by the taxpayers themselves, while local authorities are given no information on property and income taxes paid by legal entities and natural persons).

134. As for non-tax revenues (consisting primarily of property-related income and fees), their share in the revenues of local authorities' budgets is considerable: 17% in 2015, 15% in 2016 and 19% in 2017. It has to be pointed out, however, that in the case of community municipalities, both tax revenues and non-tax revenues are meagre; only large towns achieve a meaningful level of revenues.

Chart 2. Structure of municipal revenue in 2017



Source: State Audit Office

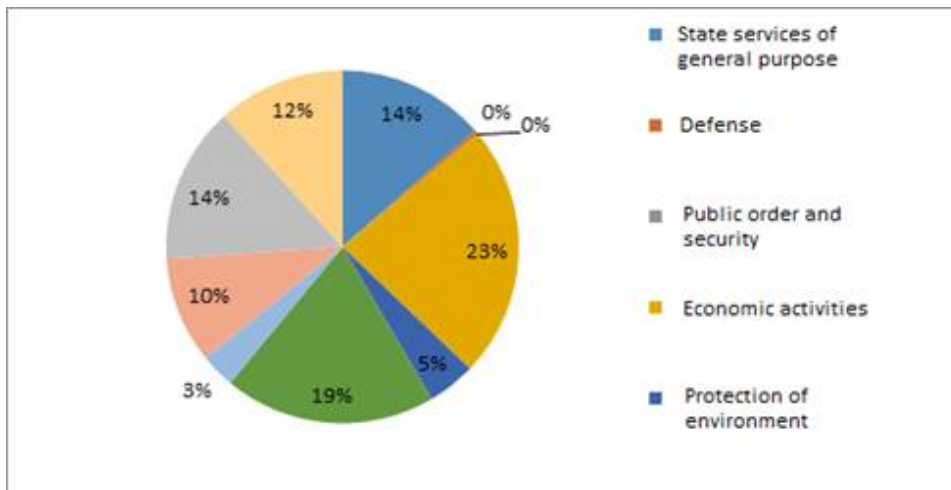
135. Fiscal decentralisation remains one of the most important concerns in relation to the local self-governance system in Georgia. The ratio between the revenues of municipalities and those of the State decreased between 2015 and 2017: from 23.4% in 2015, to 22% in 2016 and 20.1% in 2017. The share of municipal budget revenues (except for Tbilisi) in relation to Georgia's GDP is still low, amounting to 3.16% in 2015, 3.21% in 2016 and 3.06% in 2017.

136. Municipal property (Article 104 of the Code) also constitutes an important asset for the financial autonomy of municipalities. According to the National Agency of State Property, 1 335 real estate objects were transferred into the ownership of municipalities in 2016 and 1 038 in 2017. In general, proper evaluation of property transferred to local self-governments presents a significant difficulty because its market value is not being established. The ministry of economy and sustainable development does not have this information, even though it is directly responsible for the process of transferring property to local authorities. Moreover, central authorities have not yet fully implemented the decentralisation of land, water, forest and natural resources, although according to Article 107 of the Code, such property existing in the territory of a

municipality shall be assigned to the municipality. Until now, the central authorities have not managed to fulfil their obligation under Article 165 of the Code of Local Self-Government to develop, by 1 January 2016, a bill defining local natural resources, including water and land.

137. Municipal expenditure amounted to a total of GEL 1 813 million in 2017, which is GEL 24 million less than in 2016 and GEL 66 million less than in 2015. In recent years (including in 2017), municipal expenditure mostly related to the areas of economic activity (23%), housing and utilities (19%), education (14%) and other general services.

Chart 3 – Functional structure of municipal expenditure in 2017[10]



Source: Losaberidze et al. (2018), p. 21.

138. “State services of general purpose” includes administrative costs and costs for the maintenance and operation of self-governing bodies; the total cost amounted to GEL 245.9 million in 2017, which is GEL 23 million less than in the previous year and only GEL 4.3 million less than in 2015. It should be pointed out that this figure is relatively high in small municipalities.

139. The budgetary system in Georgia is based on the principle of independence. Municipalities enjoy independence in formulating their budgets and in redistributing and allocating resources. According to Georgia’s Budgetary Code, local authorities should have been drawing up their budgets using the “programme budgeting” format since 2012. Budget performance is managed through electronic public finance management systems. All accounts relating to the municipalities’ budgets appear in the State treasury system of accounts, and central government has real-time information on the status of local authorities’ budgets. Procurements are also managed through a centralised e-procurement system.

140. However, information on objectives, tasks and expected outcome indicators are still not clearly defined or are simply missing from municipal budgets, although these data should serve as a basis for local self-governments to make decisions on how to distribute their financial resources. According to critical comments made during the monitoring visit, this situation also creates problems for financial reporting and transparency and discourages citizen involvement in the budgeting process.[11]

141. Concerning compliance with Article 9, paragraph 1, there is no doubt that impressive progress has been made in recent years. A system of local revenue has been developed and municipalities can freely dispose of the biggest part of this revenue. Georgia therefore complies with Article 9, paragraph 1, of the Charter; however, the rapporteurs encourage the Georgian authorities to move forward with further financial decentralisation.

4.8.2 Article 9.2

142. According to Article 75, paragraph 4, of the amended constitution (2018), “[d]elegation of powers by the state to a self-governing unit shall be carried out on the basis of a legislative act or agreement by transferring appropriate material and financial resources”. Furthermore, according to Article 7, paragraph 4, of the amended constitution, “[t]he State ensures the correspondence of financial resources of self-governing units with its competences determined by organic law”.

143. When delegating powers to local authorities, the central government provides concomitant financial support through targeted transfers. Audits have not revealed any deficiencies concerning the use of transferred funds in the exercise of delegated powers. According to the State Audit Office, the amount of financial resources allocated to municipalities is sufficient for the exercise of the delegated powers. In only a few cases have municipalities been obliged to contribute from their own revenues in order to finance activities relating to delegated powers.

144. Georgia therefore complies with Article 9, paragraph 2, of the Charter.

4.8.3 Article 9.3

145. According to information provided by the ministry of finance, up to 85% of local authority revenues come from own revenues, including an equalisation transfer. Without an equalisation transfer this figure is 56%. Local authority tax revenues constitute 34% of total local authority revenues, while other revenues amount to 16% of total local revenues. Municipalities’ revenues cannot determine local tax rates (property tax) but they are allowed to determine the rate within the limits set by the Tax Code of Georgia. The figures shown are for the total of all local authorities, but the picture could be different in a specific municipality. Some municipalities do not benefit from equalisation transfers since their tax revenues are high enough, whereas other municipalities depend almost fully on equalisation transfers.

146. The rapporteurs therefore conclude that Georgia complies with Article 9, paragraph 3, of the Charter.

4.8.4 Article 9.4

147. As already shown in the analysis of the financial situation of municipalities, Georgian local government has different and diverse sources of revenue, including many different types of taxes. Although Georgia therefore complies with Article 9, paragraph 4, of the Charter, the rapporteurs would nevertheless encourage the Georgian authorities to move forward with the “municipalisation” of immovable property and natural resources that would certainly enlarge and further diversify the financial basis of local government in Georgia, which is a fundamental prerequisite for local autonomy.

4.8.5 Article 9.5

148. The existing formula for calculating the equalisation transfer is designed with the aim of filling the gap between projected revenues and expenditure of individual local self-governing units. Accordingly, an increase in a municipality’s own revenues will naturally result in a decrease in the equalisation transfer receivable by that municipality. Article 154 of the Code of Local Self-Government was amended to eradicate this shortcoming but the amendment was removed soon afterwards. According to some critics, this means that in general the existing transfer policy offers local authorities no incentive to increase their own revenues, because any increase would automatically cause the ministry of finance to reduce the equalisation and other transfers.

149. Chapter XI of the Budgetary Code^[12] regulates the equalisation transfer, which should serve the purpose of achieving a more or less equal level of development across the country. As defined in Article 74, “the size of the Equalization Transfert made to each Local Authority Budget is calculated with the following equation: $T=E-R$, whereby:

- a. T = the transfer to be allocated to the Local Authority Budget;
- b. E = total amount of the total sum of expenditures and increase in non-financial assets within the budget of a Local Authority, which is calculated on the basis of statistical data (population broken down by the following age groups: children below 6, adolescents from 6 to 18, adults with a socio-economic condition (rating score) falls below the threshold defined by the Government of Georgia, size of the region in square meters and road length of local significance) and equalization ratio by splitting the self-governing cities and municipalities;
- c. R = revenues to the Local Authority Budget (net of grants), which are calculated by the projections for the current year and actual trend indicators of the past 3 years within the budgets of Local Authorities.”

The final amount allocated for the equalisation transfer is determined by the central government and approved by the parliament.

150. Some experts see serious problems in the equalisation transfer scheme, since 61% of equalisation transfers are channelled to large self-governing cities with a population of 42% of the nation's total population, while only 39% of the transfers reach municipalities in which 58% of country's total population reside. By the same token, according to the Law on the Development of Mountainous Regions[13], the size of targeted transfers did not in fact change in 2015-17, even though the municipalities received additional delegated powers. Targeted transfers amounted to GEL 11.4 million in 2015, GEL 11.6 million in 2016 and GEL 11.7 million in 2017.[14]

151. The ministry of finance is working on modification of the equalisation mechanism and on revision of the formula for calculation of the equalisation transfer, as already suggested by the Congress in its Recommendation 334 (2013) on local and regional democracy in Georgia and during the post-monitoring procedure. There is therefore no incompatibility with Article 9, paragraph 5, of the Charter. On the other hand, it is obvious that the existing equalisation mechanism does not fully comply with the Charter, since the mechanism should work for the benefit of weaker local authorities and Georgian authorities should be encouraged to further elaborate the equalisation formula and monitor the effects of its implementation upon regional and intermunicipal disparities.

152. The rapporteurs are of the opinion that the situation in Georgia only partially complies with the Article 9, paragraph 5 of the Charter.

4.8.6 Article 9.6

153. According to the ministry of finance, there is a system in place to negotiate grants for investment projects from the State Budget Regional Development Fund; each decision is made by the Government Commission on Regional Development which reviews the proposals made by municipalities. Furthermore, the Code contains provisions permitting a local authority to engage in consultations with the national associations of Georgian local authorities such as NALAG. Georgia therefore complies with Article 9, paragraph 6, of the Charter, and ratification of Article 9, paragraph 6, could be considered, as several Georgian interlocutors also confirmed.

4.8.7 Article 9.7

154. Besides the equalisation transfer, the central authorities can allocate targeted transfers to self-governing units for the exercise of their delegated powers. They can also allocate special transfers, which are intended to be used for urgent projects and also to cover damage caused by unforeseen events (natural disasters, for example) and which cannot be financed from the local budget, but which are nevertheless considered to be urgently needed in order to benefit the local population.

155. For the year 2018, the structure of the total financial assistance transferred to local authorities from the central budget was as follows:

Description	Thousand GEL	%
Equalisation grants	705 080.0	92
Targeted transfers (for the exercise of delegated powers)	11 770.0	1.5
Special transfers (for infrastructure projects)	51 150.0	6.5
Total	768 000.0	100

156. Calculation of the targeted transfers is performed on the basis of consultations between the Ministry of Finance of Georgia and the financial administrations in the municipalities, in accordance with the real value of the cost of implementation of the delegated task. A special commission has been created by the government to review the project requests submitted by the municipalities and to prepare requests for funding, for approval by the government. This kind of transfer is earmarked for specific projects and can only be used for such. Special transfers are calculated on the basis of the volume and cost of the approved projects.

157. The share of State funds which is earmarked for special transfers is relatively small (see table above), and therefore the system of State grants in Georgia does not affect the basic freedom of local authorities to exercise policy discretion and is in accordance with Article 9, paragraph 7, of the Charter.

4.8.8 Article 9.8

158. The capital market is still developing in Georgia. At the same time, the Government of Georgia has access to donor credits on concessional terms. Municipalities are allowed to borrow only with the consent of the government and they can only borrow for investment purposes. Since the government is in a better position to negotiate with the donor community, in practice the central government signs the loan agreements and then lends the borrowed funds to local authorities for investment projects. In 2017, municipalities borrowed 4% of total 2017 budget expenditure for this purpose.

159. Generally, local self-governing bodies in Georgia do not possess large amounts of borrowed funds. Audits have not revealed any particular weaknesses related to loans and credit in the municipalities. Municipal debt management is regulated by the fiscal rules (macroeconomic parameters) laid down in the Organic Law of Georgia on Economic Freedom (Article 2): the so-called "debt rule" – 60% of GDP; "expenditure rule" – 30% of GDP, and "balance rule" – 3% of GDP. The government is allowed to set certain overall restrictions in order to keep general government parameters in line with these limits, but municipalities are fully independent to define their priorities in terms of spending within the resources available to them. Local self-governing bodies may only borrow amounts exceeding the limits determined by law from public authorities and from legal entities that are controlled by public authorities. Property owned by the municipalities cannot be used as collateral for a loan.

160. Restrictions on borrowing autonomy are provided by law and do not exceed similar restrictions in force in other European countries.

161. The rapporteurs therefore conclude that Georgia complies with Article 9, Paragraph 8, of the Charter.

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

162. Intermunicipal co-operation is gradually emerging in Georgia. In July 2015, the Code empowered municipalities to establish joint enterprises, and local authorities have started to come forward with initiatives for such collaboration. For example, the city of Zugdidi and the community of Zugdidi have been successful in continuing a joint waste management enterprise, even though the municipality was split in 2014. Other self-governing units have established regional development agencies that are still operating in some regions (Mtskheta-Mtianeti, 2016).

163. Three municipalities in the highlands of the Autonomous Republic of Adjara established a joint municipal services development centre in 2017 and the centre has already obtained its first funding from the European Union in order to improve solid waste removal services.

164. Article 21 of the Code provides municipalities with the right to implement joint activities and to establish joint entities for the provision of services and implementation of projects. However, according to interlocutors from the Tbilisi Government, a number of changes are needed in sectoral legislation in order to allow municipalities to allocate financial resources for joint projects and shared infrastructure.

165. Article 76, paragraph 3, of the amended constitution (2018) provides that: “a self-governing unit shall be entitled to co-operate with other self-governing unit[s] to exercise its powers according to rule prescribed by the organic law”.

166. Georgia therefore complies with Article 10, Paragraph 1, of the Charter. However, the Georgian authorities should be encouraged to further elaborate the legal framework, especially concerning sectoral laws, in order to facilitate and promote intermunicipal co-operation.

4.9.2 Article 10.2

167. Article 76, paragraph 3, of in the constitution provides that: “a self-governing unit shall be entitled to join unions of self-governing units in accordance with the organic law”. The right of local self-governing units to associate is also guaranteed by Article 20 of the Code of Local Self-Government. It allows local self-governing units to establish a union (association) in the form of a non-commercial legal entity for the purpose of coordinating their own activities. Such unions are authorised to participate in the decision-making process and conduct consultations with the State authorities, and also to review draft laws and other projects. They are also entitled to join international associations of self-governing units. NALAG is recognised as the national association of Georgian local self-governing units. It renewed its political leadership following the local elections in 2014 and another transfer of power took place after the 2017 local elections. The current president of NALAG is the Mayor of Tbilisi, but NALAG has a multiparty executive board and its membership is formed on the basis of regional representation.

168. NALAG has concluded a memorandum of understanding with the Georgian Parliamentary Committee on Regional Policy and Self-Government and also with the Georgian Ministry of Regional Development and Infrastructure. The association is actively involved in discussions on any matter that has direct influence on

local government. During the presentation of the new decentralisation strategy, the Government of Georgia stated that NALAG will be a key partner for the government during implementation of the next stage of decentralisation in Georgia.

169. Georgia therefore fully complies with Article 10, paragraph 2, of the Charter and could ratify the relevant provision.

4.9.3 Article 10.3

170. In principle, Georgian municipalities are allowed to co-operate with foreign municipalities without a need of national government's approval. Approval from the Government is needed only if this cooperation involves reception of a grant and if this grant is not part of an intergovernmental agreement between the Georgian State and a foreign State (or an international organisation). Concerning the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, Georgian interlocutors were rather cautious. The Georgian side closely connects this issue with the restoration of Georgia's territorial integrity and realisation of the principles of the European Charter of Local Self-Government in Georgian territories which are not currently under the control of the Georgian Government, and where foreign troops are present without its consent.

171. The second issue is the exact demarcation of the State borders. Georgia officially left the Commonwealth of Independent States (CIS) in 2009 and the process of demarcation of State borders with CIS member States (Russia, Armenia and Azerbaijan) has not yet been completed. Georgian interlocutors pointed out that before the ratification of any international legal act on transfrontier co-operation, those frontiers must be physically and legally defined. The process of demarcation of the State borders with Armenia and Azerbaijan is in progress; all remaining difficulties are technical in nature and so this process may be expected to end successfully in the near future. According to the Congress delegation's Georgian interlocutors, Georgia is committed to ratifying the additional protocol to the outline convention. However, continuing occupation of parts of Georgian sovereign territory and the on-going process of demarcation of borders with CIS member States means that the process of ratification can move only slowly.

172. Georgia complies with Article 10, paragraph 3, of the Charter.

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.

173. A major guarantee for the legal protection of each local self-governing unit is provided by the constitution. Article 60, paragraph 4, of the constitution entitles a local authority to have access to judicial remedy, namely to apply to the Constitutional Court if a decision by a State agency has infringed on the powers and competencies prescribed to local authorities by law. The Code, too, provides that a municipal Sakrebulo (council) may, in accordance with Georgian legislation, file an appeal with the Constitutional Court of Georgia requesting a review of the constitutionality of normative acts. Furthermore, according to Article 7, paragraph 4, of the Code, a municipality may appeal to a court in respect of those administrative-legal normative acts and actions that restrict the exercise of local self-government powers provided for by law. Finally, according to the Code (Articles 132,135 and 136), any decision on the legal compliance of any normative act adopted by a self-governing body within its exclusive competences shall be taken by judicial

authority, and such decisions may be appealed to a court of higher instance. Within the area of its delegated competences, every self-governing authority is entitled to challenge a decision of the State supervisory body before a court.

174. In view of this legal framework, Georgia fully complies with Article 11 of the Charter.

5. ANALYSIS OF THE SITUATION OF REGIONAL DEMOCRACY IN THE LIGHT OF THE REFERENCE

FRAMEWORK FOR REGIONAL DEMOCRACY

175. Georgia's administrative and territorial arrangement does not envisage the regional level as such. Although the central authorities have their proxies, entitled State trustees – Governors, appointed in administrative and territorial units (groups of municipalities), regional territorial units as such do not exist. Regions are not legal entities. They have no powers or revenues of their own. There are no elected representative bodies at the regional level.

176. Georgian regions differ significantly from each other in their level and speed of development. There is a clear and growing imbalance in this regard among various regions in Georgia. Almost half (48%) of the country's GDP is produced in the capital city and this figure is persistently increasing (in 2016, for example, nearly three quarters of foreign direct investment in Georgia – USD 1.5 billion – were in Tbilisi), while the share in some other regions is extremely low and continues to decline; examples are Imereti, whose share in the GDP decreased from 15.2% to 11% between 1975 and 2013 and Kakheti, whose share went down from 10% to 6% in the same period. The standard of living in the regions (especially in rural areas) is much lower than in urban areas (cities) and even lower again compared to the capital city.

177. Georgia implemented a reform of regional government in 2014 and regional governors, who were previously responsible to the president, now have a trustee relationship with the Government of Georgia; this move has changed to role of governors from overseers of local government to being a functional level of central government. Moreover, the Code Local Self-Government has established Regional Advisory Councils (RACs), which operate under the authority of regional State trustee – Governors, as explained earlier in this report. An RAC is chaired by the State trustee – Governor, who submits the regional development strategy adopted by the RAC to the Government of Georgia.

178. Regional strategies are reviewed by the Interministerial Commission on Regional Development of Georgia and sent to the government for adoption. As a result of the 2014 reform, the regional level now plays a key role in regional development in Georgia and is instrumental in implementing government territorial policy. Another key document for regional development is the spatial development plan, which encompasses development priorities for each region and sets specific targets for the development of physical, social and economic infrastructure across the country.

179. Regional policy and development of regions should cover the specifics of each region and the existence of relevant regulations in order to solve their problems. The Law on the Development of Mountainous Regions was adopted with this aim. The purpose of this law is to define the benefits of stimulating socio-economic progress in high, mountainous regions that will ensure the welfare of the people living in these areas, increase their living standards, promote employment and improve social and economic conditions. The law sets additional social and tax privileges for the population and entrepreneurs living in high, mountainous regions.

180. The vision of regional development in Georgia is based on the approach to economic and social development policy (cohesion) used in regions of the EU; this implies the need for efficient planning and implementation of integrated policies tailored to development of the areas concerned. Based on this approach, the Government of Georgia adopted the Regional Development Strategy, according to which the

regional development strategies for 2013-16 were adopted. In 2014, the Regional Development Programme 2015-17 was issued; this was a mid-term document, which determined the main goals and objectives of regional development policy in Georgia along with the relevant priorities and measures, and defined the necessary conditions for ensuring balanced and sustainable socio-economic development of Georgia's regions. More recently, the Georgian Ministry of Regional Development and Infrastructure has drafted and submitted to the government for approval the Regional Development Programme 2018-21, which defines the main objectives and priorities of regional development policy in Georgia, relevant priorities and activities during the years 2018-21 and establishes measures for balanced development of the country's regions together with steps that need to be taken in order to increase the competitiveness of the country's regions.

181. During the monitoring visit, the rapporteurs raised the question of possible territorial reform that would introduce a second tier of local government in Georgia. The minister of regional development and infrastructure answered that at this stage, the government considers it important to expand the competencies of self-governing units, carry out financial decentralisation and establish effective and transparent management standards. A wide range of public needs should be managed on the ground. Self-governing units should be given more financial resources and other necessary tools and capabilities in order to improve services. In addition to solving local problems, self-governing units should take care of social and economic development. Local government should meet the highest standards of accountability. It should ensure the active involvement of citizens in solving important matters. Once these issues have been resolved, it will be possible to start considering a second tier of local government.

6. THE AUTONOMOUS REPUBLIC OF ADJARA

182. On 13 October 2017, along with passing amendments to the constitution, the parliament adopted the Constitutional Law of Georgia on the Autonomous Republic of Adjara, according to which the Supreme Council of Adjara was to submit to the Georgian Parliament its own amendments to the Constitution of the Autonomous Republic of Adjara. A commission was formed to ensure public discussion of the proposed amendments and following these discussions the Supreme Council adopted the new constitutional law in three hearings. The new Constitutional Law of Georgia on the Autonomous Republic of Adjara was adopted unanimously by the Parliament of Georgia on 4 May 2018.

183. According to Congress delegation's interlocutors from the Autonomous Republic of Adjara, there were shortcomings in the previous Constitutional Law of Georgia on the Status of the Autonomous Republic of Adjara and it failed to ensure a clear and fair distinction between the State, the autonomous republic and self-governing units. Consequently, the newly adopted constitutional law separates the special powers of the Autonomous Republic of Adjara from the competencies of the Georgian State and local self-government. The new law establishes the principle of universality of powers, according to which the autonomous republic may exercise any powers not belonging to the State's exclusive powers as laid down in Georgian legislation or the exclusive authority of local self-government, and exercise of which has not been excluded from the authority of the Autonomous Republic of Adjara in legislation. The constitutional law also establishes the possibility of delegating powers to the Autonomous Republic of Adjara.

184. The principle of universality of powers established by the new Constitutional Law on the Autonomous Republic of Adjara is significant. Regarding social services, relevant programmes are to be developed in the budgets of central, autonomous and self-governing units. The exclusive powers of the Autonomous Republic of Adjara are:

- a. adoption of laws and other normative acts of the Autonomous Republic of Adjara;

- b. determination of the structure, powers and rules of activity of the Government of the Autonomous Republic of Adjara;
- c. development and exercise of the budgetary policy of the Autonomous Republic of Adjara in accordance with the legislation of Georgia and the Autonomous Republic of Adjara, adoption of the budget of the Autonomous Republic of Adjara and control of its implementation;
- d. management and administration of the property of the Autonomous Republic of Adjara in accordance with the legislation of Georgia and the Autonomous Republic of Adjara;
- e. management and administration of the land, forest and water resources owned by the Autonomous Republic of Adjara in accordance with the legislation of Georgia and the Autonomous Republic of Adjara;
- f. urban and territorial planning and development of the Autonomous Republic of Adjara in accordance with the legislation of Georgia and the Autonomous Republic of Adjara;
- g. management of roads and other infrastructure having importance for the autonomous republic;
- h. establishment, management and support of educational, scientific, creative and sports institutions having importance for the autonomous republic;
- i. defining and awarding the prizes and honorary titles of the Autonomous Republic of Adjara in accordance with the legislation of Georgia and the Autonomous Republic of Adjara;
- j. management of the Archives Administration of the Autonomous Republic of Adjara.

185. The Autonomous Republic of Adjara may exercise any authority in the fields of economy, agriculture, tourism, health and social security, education, culture, sport and youth policy, and environmental protection, provided, as described above, that such authority has not been allocated by law to the State or to local government and has not been explicitly excluded from the competence of the Autonomous Republic of Adjara in Georgian legislation. The autonomous republic enjoys financial autonomy within the scope established by Georgian legislation. For the purpose of ensuring the exercise of its powers, the autonomous republic receives part of State tax and non-tax revenues, in addition to special funding from the State budget. Property taxes are transferred to self-governing units. The Autonomous Republic of Adjara has its own property and its definition shall be determined by legislation of Georgia.

186. The relationship between the Government of the Autonomous Republic of Adjara and Georgian State bodies and other State bodies of the autonomous republic are regulated by the Law of the Autonomous Republic of Adjara on the Structure, Powers and Rules of Operation of the Government of the Autonomous Republic of Adjara. Ministries of the autonomous republic are accountable to the government and perform the duties provided by law and assigned to them by the chairperson of the government. The government co-ordinates and supervises the activities of the ministries and State agencies. In addition, the government approves regulations which define the powers and duties of the ministries.

187. The Chairperson of the Government of the Adjara Autonomous Republic co-ordinates the government's relationship with local self-governing bodies. On the basis of the constitution of the autonomous republic and according to the rules prescribed by the relevant legislation, self-governing bodies existing on the territory of Adjara will receive financial resources from the budget of the autonomous republic. In addition, the document on the State budget includes a special provision defining the budgeting of projects to be implemented in the municipalities; the budget's reserve fund also allocates financial resources to cover unforeseen expenses in the municipalities.

188. According to the Constitution of Georgia (Article 45), the supreme representative organ of Adjara (the Supreme Council) has the right of legislative initiative in Georgia. Furthermore, all members of the Supreme Council of Adjara are members of the electoral college which elects the President of Georgia, (Article 50 of the new amended constitution 2018).

7. CONCLUSIONS AND RECOMMENDATIONS

189. Therapporteurs would like to highlight the substantial progress that has been made in the field of local democracy since the Congress visits to Georgia in 2003, 2004, 2012, 2013 and a post monitoring mission in 2015. The principles of the Charter have been integrated into constitutional provisions and into other legislation. The constitution has been amended and the principle of subsidiarity is now explicitly recognised in the field of local government, alongside the commensurability principle. Furthermore a “clause of general competence” in respect of local authorities has been added and the constitutional status of the Autonomous Republic of Adjara has been further strengthened.

190. The direct election of all mayors has also been introduced, as suggested in Recommendation 334 (2013) on local and regional democracy in Georgia. New mechanisms of citizen participation have been established and the ratification process of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority seems to be a matter of time and may be initiated before the end of 2018.

191. The financial capacity of local government has been enhanced through additional tax revenue; the auditing system has been modernised and specialised auditing staff have been recruited.

192. Therepresentative position of NALAG as an interlocutor and partner has been officially recognised. NALAG is involved in the discussions and negotiations regarding all matters which concern local authorities directly.

193. The Georgian Government is developing a comprehensive reform strategy to develop decentralisation and modernisation of local government. It is also elaborating a regional development strategy in order to confront the challenges resulting from the extreme regional disparities which still prevail in the country.

194. However, the rapporteurs would like to draw the attention of the Georgian authorities to a particular issue, since several opposition members complained to the Congress delegation about their lack of access to information held by municipal administrations, and in general about conditions that allegedly prevent opposition members from fulfilling their role in assemblies and other municipal bodies. The Congress rapporteurs were not in a position to investigate these allegations during their visit. However, the rapporteurs have learned that civil courts have been successfully used by some members of the opposition to obtain public information. Still, in the opinion of the rapporteurs, further steps towards facilitating the role of the opposition in local government and restoring the level of mutual trust that is necessary for the good functioning of local democracy would be highly welcomed.

195. In addition, capacity building programmes aimed at raising the skills of local deliberative bodies' members to use the available legal instruments to protect their rights as local elected representatives could positively contribute to strengthening the role of opposition parties in local self-government, in particular in remote municipalities.

196. As regards the power of mayors in the appointment of deputy mayors, in the rapporteurs' view, the Georgian government could consider to review the internal structure of local authorities in order to make it more balanced, to avoid an overconcentration of power in the hands of mayors and to ensure direct accountability of the executive to the Sakrebulo in the light of new plans for decentralisation.

197. The existing equalisation formula may not be serving the interests of the weaker municipalities; furthermore, it seems to create incentives for municipalities not to increase their own revenues because the amount of the equalisation grant would accordingly decrease. It is therefore recommended to improve the financial equalisation procedure (both as regards distribution criteria and increasing the equalisation fund). Georgian authorities are already working on it.

198. Several competences that have been transferred to municipalities (for example, the supply of water) are not full and exclusive. Sectoral legislation is still not in accordance with the decentralisation policies of the government and progress on review and harmonisation of this legislation is very slow. There is also a need to further elaborate the legal framework, especially concerning sectoral legislation, in order to facilitate and promote intermunicipal co-operation.

199. There are some concerns about the formula for the calculation of the number of employees in self-governing units. In principle, such restrictions do not contradict the Charter, but they have to be flexible and take into consideration the existing gap between municipalities in this respect. According to the Charter, local authorities should be able to determine their structures (including number of posts of civil servants) "in order to adapt them to local needs"; this is not possible if a formula for the calculation of the number of employees is based on formalistic criteria. This formula should therefore be reviewed.

200. Regional disparities remain extremely wide in Georgia. Georgian authorities should therefore be encouraged to continue the regional development efforts, ensuring a certain degree of continuity with regard to the regional development strategy and policies in existence, in order to consolidate what has already been achieved.

201. Georgian authorities are encouraged to ratify Article 4, paragraph 6, Article 5, Article 6, paragraph 2, Article 9, paragraph 6, and Article 10, paragraphs 2 and 3. The rapporteurs stress that concerning Article 4, paragraph 6, Article 5, Article 9, paragraph 6, and Article 10, paragraph 2, Georgian legislation already fulfils the requirements of the Charter.

202. During their visit, the rapporteurs were informed by interlocutors from the government and the parliament that Georgia is ready to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) in 2018.

APPENDIX – Programme of the Congress monitoring visit to Georgia

CONGRESS MONITORING VISIT TO GEORGIA

Tbilisi, Mtskheta (17-18 April 2018)

PROGRAMME

Congress delegation:

Rapporteurs:

Mr Michail ANGELOPOULOS

Rapporteur on local democracy

Chamber of local authorities, EPP/CCE^[15]

Member of the Monitoring Committee of the Congress

Mayor of Samos Island, Greece

Mr Stewart DICKSON

Rapporteur on regional democracy

Chamber of regional authorities, ILDG

Member of the Monitoring Committee of the Congress

Member of the Northern Ireland Legislative Assembly,

United Kingdom

Congress secretariat:

Ms Stephanie POIREL

Secretary to the Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe

Mr Pierre MOUGEL

Assistant to the Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe

Consultant:

Mr Nikolaos-Komninos CHLEPAS

Member of the Group of Independent Experts on the European Charter of Local Self-Government (Greece)

Interpreters:

Ms Natia PORCHKIDZE

Ms Mara TSAKADZE

The working languages, for which interpretation is provided during the meetings, will be Georgian and English

Tuesday, 17 April 2018

Tbilisi, Mtskheta

MEMBERS OF THE GEORGIAN NATIONAL DELEGATION TO THE CONGRESS

NATIONAL ASSOCIATION OF LOCAL AUTHORITIES OF GEORGIA (NALAG)

INDEPENDENT EXPERTS

Georgian National Delegation to the Congress

Mr Kakha KALADZE, Head of Delegation, Mayor of Tbilisi

Ms Nino KAVTARADZE, Deputy Head of Delegation, Member of Rustavi City Council

Ms Sevdia UGREKHELIDZE, Member of Mtskheta City Council

Mr David KATAMADZE, Member of Tkibuli Municipal Council

Ms Tamar KODOSHVILI, Member of Gori Municipal Council

Ms Sophiko SIUKAEVA, Member of Terjola Municipal Council

Ms Tamar TALIASHVILI, Member of Tbilisi City Council

Mr George TKEMALADZE, Member of Tbilisi City Council

Mr Beka DAVITULIANI, Member of Tbilisi City Council

Mr Irakli TCHEISHVILI, Member of Adjara Supreme Council

National Association of Local Authorities of Georgia (NALAG)

Members of NALAG executive board

Independent Experts

Mr David MELUA

Dr David LOSABERIDZE

· **TBILISI CITY HALL**

Mr Kakha KALADZE, Mayor of Tbilisi

Mr Irakli KHMALADZE, Vice-Mayor of Tbilisi

Mr Andria BASILAIA, Head of Municipal Department of Economic Development

Mr Gaioz TALAKVADZE, Head of Municipal Department of Finance

· **MTSKHETA MUNICIPALITY**

Mr Gela BAKRADZE, Chair of the City Council

(the municipality is kindly asked to complete the full list of participants at this meeting)

· **MINISTRY OF FINANCE**

Mr Mamuka BAKHTADZE, Minister

Mr Giorgi KAKAURIDZE, Deputy Minister

· **PARLIAMENT**

Mr Irakli KOBAKHIDZE, Speaker of the Parliament

Mr Zaza GABUNIA, Chair of the Committee of Regional Policy and Self-Government Committee

Mr Zviad KVACHANTIRADZE, Chair of Diaspora and Caucasus Issues Committee

Wednesday, 18 April 2018

Tbilisi

· **PUBLIC DEFENDER (OMBUDSMAN)**

Ms Tamar GVARAMADZE, First Deputy Public Defender

Ms Ekaterine SKHILADZE, Deputy Public Defender

· **STATE AUDIT OFFICE**

Ms Ekaterine GHAZADZE, Deputy Auditor General

Mr Giorgi MAMRIKISHVILI, Head of Department for Local Self-governance Units' Budgets

Mr Kakhaber KIRTAVA, Head of Audit Department in the Autonomous Republic of Adjara

· **MEETING WITH THE REPRESENTATIVES OF THE OPPOSITION**

· **MINISTRY OF REGIONAL DEVELOPMENT AND INFRASTRUCTURE**

Ms Maia TSKITISHVILI, Minister

Mr Nikoloz ROSEBASHVILI, Head of the Department for Relations with Regions and Local Self-Government Agencies

Mr Gagi BUADZE, Executive Director of Municipal Development Fund of Georgia

Departure of the Congress delegation from Tbilisi

[1]. L: Chamber of Local Authorities / R: Chamber of Regions

EPP/CCE: European People's Party Group in the Congress

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.

[2] Debated and adopted by the Congress on 7 November 2018, 2nd sitting (see Document CG35(2018)18, explanatory memorandum), corapporteurs: Michail ANGELOPOULOS, Greece (L, EPP/CCE), and Stewart DICKSON, United Kingdom (R, ILDG).

[3]. [www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2018\)010-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2018)010-e). Previous version: <http://civil.ge/eng/Article.php?id=30474>.

[4]. Under former legislation the supply of water was under the regulation of the central authorities, namely the LEPL (United Water Supply Company) of the Ministry of Regional Development and Infrastructure of Georgia. Granting these powers to the self-governing units may result in the duplication of competences. It is unclear whether this competence has been granted entirely to self-governing units or whether certain functions are shared between the water supply company and the self-governing units. Furthermore, it is equally unclear who will be responsible for the maintenance of the water supply and water sanitation infrastructure. It is noteworthy that currently the majority of municipalities lack the equipment needed to run a water supply system (see <http://www.transparency.ge/en/blog/new-local-self-government-code-overview-main-novelties>).

[5]. Debated and adopted by the Congress on 19 March 2013, 1st Sitting (see document CG(24)10, explanatory memorandum), rapporteurs: Nigel Mermagen, United Kingdom (L, ILDG) and Helena Pihlajasaari, Finland (R, SOC).

[6]. David Losaberidze, Irakli Kakhidze and Ana Katamidze (2018), Development of local democracy in Georgia – Annual Report (2016-2017); Local Self-Government in Georgia, 1991-2014, the International Center for Civic Culture, 2015, www.ivote.ge/images/doc/local%20democracy%20development%20report_english%20final%202017.pdf.

[7]. <https://ichange.gov.ge/>.

[8]. See David Losaberidze, Irakli Kakhidze and Ana Katamidze (2018), Development of local democracy in Georgia. Annual Report (2016-2017), p. 20.

[9]. See David Losaberidze, Irakli Kakhidze and Ana Katamidze (2018), Development of local democracy in Georgia. Annual Report (2016-2017).

[10]. See David Losaberidze, Irakli Kakhidze and Ana Katamidze (2018), Development of local democracy in Georgia. Annual Report (2016-2017), p. 21.

[11]. Ibid.

[12]. Budgetary Code of Georgia:

http://europam.eu/data/mechanisms/FOI/FOI%20Laws/Georgia/Georgia_Budget%20Code%202009.pdf.

[13] <http://www.ge.undp.org/content/georgia/en/home/presscenter/pressreleases/2015/07/31/georgia-adopts-a-law-on-the-development-of-mountainous-regions-.html>

[14]. See David Losaberidze, Irakli Kakhidze and Ana Katamidze (2018), Development of local democracy in Georgia. Annual Report (2016-2017), p. 19-20.

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