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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019]

In the Republic of Moldova, the principle of local self-government is explicitly recognised and established in the constitution and in regular legislation. For example, Article 109.1 of the constitution provides that “public administration within the administrative territorial units shall be based on the principles of local autonomy, decentralisation of public services”. The second paragraph of this article even provides a wide definition of the extent of local autonomy: “The concept of autonomy shall encompass both the organisation and functioning of the local public administration, as well as the management of the communities represented by that administration.” The general legislation on local government also establishes and recognises the principle of autonomy, with explicit references to the Charter. Thus, Article 3 of the Law on Local Public Administration enumerates the “basic principles of local public administration” and provides that: “The public administration in administrative and territorial units shall rely on principles of local autonomy, decentralisation...” (paragraph1). Finally, Article 7 provides that: “In carrying out their competences, the authorities of local public administration enjoy autonomy, enshrined in and safeguarded by the Constitution of Moldova, the European Charter of Local Autonomy and by other treaties Moldova is a party to.” This express reference to the Charter in domestic legislation constitutes a recognition of the principle of local self-government.

The Constitutional Court has systematically underlined and stressed the importance of local autonomy and provided a clear definition. Thus, in its ruling No. 71/1999 the court stated that “local autonomy presumes the right and effective capacity of local authorities to manage and solve, under the law, under their own responsibility and in favour of the local population, an important part of public affairs”, a definition that strongly resembles that provided by Article 2 of the Charter. Furthermore, in its ruling No. 14/2004 (on co-ordination of local public administration activity), the court went on to declare that “the principle of local autonomy is one of the fundamental principles of any democratic system. It governs the local public administration and the work of its authorities. This constitutional principle gives local administrative units the possibility of self-government at local...
Article 3.1

Concept of local self government

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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019]

The analysis of this article deserves a nuanced assessment in the case of Moldova. On the one hand, the rapporteurs are convinced that local bodies (councils and mayors) are for the most part free and autonomous in adopting decisions, plans and budgets at local level. In this sense, they heard unequivocal testimony that, in general, local rulers feel free to take decisions, in their day-to-day activities, and that there is room for autonomy. The rapporteurs are of the opinion that, for the most part, Moldovan local authorities are “autonomous” in the sense that they can take decisions freely.

However, and for the sake of this provision of the Charter, the main question is whether, in the present situation, Moldovan local authorities regulate and manage a “substantial share of public affairs”, in the light of the most common standards across Europe. This share may be substantial considering the political and economic situation of the country, but certainly not when compared to the most general standards across Europe. The rapporteurs consider that in the Republic of Moldova the substantial scope of local autonomy is too limited. This assessment is based on different elements, that will be developed further below, but which can be enumerated here: a. the relatively low level of local competences; b. the total dependency on financial transfers and subsidies from the state; c. the de facto incapability of framing and implementing real public policies in the interest of the local residents d. the lack of human resources; and e. the small amounts of the local budgets and the low level of local expenditure in the context of the general public sector expenditure. In this sense, Moldovan indices and figures are below the average figures in Europe.

In the light of the above, it may be concluded that Article 3.1 of the Charter is respected in the Republic of Moldova, but there is room for substantial improvement.

Article 3.2

Concept of local self government

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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

The structure of Moldovan local authorities is similar to other European countries: there is a council and a mayor, elected through different electoral processes. Elections are held every four years at national level, and the last local elections were held in June 2015. Elections are regulated by the constitution and by the Electoral Code. Every person who is a Moldovan citizen, has reached the age of 18 and has been registered on the voters register has the right to vote in local elections. Moldovan local elections have been subject to observation by the Congress and other international organisations and bodies. The general appraisal was that they were fair and regular.

In the local authorities of the first level (villages/towns) the representative body is the council (48 towns with city councils, and 850 communes with local councils) composed of “councillors”, whose number is proportional to the number of local residents. The council is the body for debate and decision making; it adopts the most important political decisions: the local budget, the local internal by-laws, the local master plan, etc. Its members are elected by the citizens of the municipalities, through a process of secret, general and direct ballot.

The mayor (primar) is also elected directly by the local residents in a specific electoral process, different from that of the council but which also takes place every four years. The elections for mayors are based on a two-round system, where if no candidate obtains 50% of the vote, a second round is organised among the two candidates that obtained the most ballots in the first round. Once the elections have taken place, the Central Electoral Commission must validate the results. It is only after this validation that the elected mayor can become the effective mayor and take the oath of office. The mayor is the top executive authority of the town/village/city/municipality and has a clear political leadership capacity and executive functions: the awarding of contracts, the execution of laws and regulations, the management of staff, etc.

In the case of the second-level local authorities (districts or Raioane) there is a council and a president. The council is also elected by means of a universal, equal and direct suffrage by secret ballot for a term of four years. The president of the Raion, however, is elected for a term of four years, and is the executive head of the Raion.

Apart from the formal bodies for decision making, Moldovan legislation provides for other forms of citizen participation, such as local referendums. The most controversial form of local referendum is the one that may be organised to recall or dismiss the mayor of the city/village/municipality (Article 177 of the Electoral Code). The Congress and the European Commission for Democracy through Law (Venice Commission) have already analysed this peculiar feature of the Moldovan system (see the explanatory memorandum to Recommendation 411 (2018), drafted after the fact-finding mission carried out in December 2017 and further comments will be made, below, under point 6).

In the light of the above, the delegation draws the conclusion that the provisions of Article 3.2 of the Charter are respected in the Republic of Moldova.

Article 4.1
Scope of local self government

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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

The competences and responsibilities of Moldovan local authorities are not prescribed by the constitution, but they are identified in statutes, namely by the Law No. 436-XVI on Local Public Administration, the Law No. 435-XVI on Administrative Decentralisation and the Law on Public Finance. In addition, the sectoral legislation also stipulates responsibilities for local authorities. According to those laws, the main responsibilities for first-level local authorities are:

socio-economic development;

territorial and urban development;

construction and maintenance of roads, streets, local bridges and traffic management;

maintenance and operation of water supply systems, sewerage, water treatment, sanitation and domestic waste;

social housing; social assistance to the population, protection of children;

local public transportation; bus and train stations;

pre-school education;

public cultural institutions; maintenance of libraries and museums;

sports facilities and sports schools;

markets and other public places; protection of consumer rights;

registration and maintenance of households; management of local property assets;

fire departments;

maintenance of parks and green spaces; environmental protection;

management of land;

maintenance of cemeteries;

green areas;

waste management.
The competences of the second-level local authorities (Raioane) include:

management of public property;
construction of roads of raiional interest;
regional public transport;
spatial planning;
economic development support;
local gas and heat distribution;
maintenance of education buildings;
cultural, tourism and sport management;
social assistance;
co-ordination of the activities of the local councils in order to provide public services at district level;
management and maintenance of systems and infrastructure providing services to different towns and villages.

In addition to these clearly defined competences, local authorities may receive “delegated” tasks from central authorities and legislation. Moldovan local authorities also have regulatory powers, since they can approve local binding regulations imposing duties, conditions and obligations on the local residents.

Despite this classification of competences, the delegation heard several complaints from local leaders that local competences are not clearly delimited, and that there are many cases of overlapping between the responsibilities of the different levels of local authorities, or with those of the state. It seems that there is also an overlapping between the competences of the Raioane and that of the cities. This seems to be a structural problem in the Moldovan system of local competences, as it was underlined by Recommendation 322 (2012), point (5.f). Apparently, little or no progress has been achieved in this field.

In the light of the above, Article 4.1 of the Charter is complied with in the Republic of Moldova.

**Article 4.2**

**Scope of local self government**

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.
Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

According to the information collected by the delegation, Moldovan local authorities do not enjoy full discretion to exercise their initiative “with regard to any matter which is not excluded from their competence nor assigned to any other authority”. Local authorities are supposed to act strictly within the domains and spheres where the law has attributed competences to them. Furthermore, the lack of operational capacity of most Moldovan local authorities prevents them from exercising new or innovative actions outside the circle of competences identified in the law.

In the light of the above, the rapporteurs consider that the Republic of Moldova does not comply with Article 4.2 of the Charter.

Article 4.3
Scope of local self government

Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

This provision embodies the so-called principle of subsidiarity, according to which, “public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.” This also embodies a call for decentralisation, something which is especially needed in a country coming from the soviet system where over-centralisation was the rule. In this sense, decentralisation is established in the constitution as a founding principle of local government (Article 109) and, in regular legislation, for there is a specific law on decentralisation: Law 435-XVI of 28 December 2006 on Administrative Decentralisation.

However, the rapporteurs are not convinced that the principle of subsidiarity is respected in Moldova and that it has inspired a real devolution strategy. In fact, the delegation heard and read many complaints from local leaders and representatives that the National Decentralisation Strategy has not been implemented, or only to a minor extent; that most elements of the roadmap have not been implemented; and that the government has extended the deadlines of the public administration reform. In recent years, it appears that there have not been any further transfers of competences and powers to the local authorities, and devolution at local level has been halted. What is more, the delegation heard complaints that the political party in power is favouring a clear move towards re-centralisation. The central government, for its part, provided a different view on the matter. Governmental officials claimed that the government is about to make reforms and changes towards further decentralisation, but they did not provide details or a realistic work plan.

In the light of the above, the rapporteurs conclude that the Republic of Moldova does not fully comply with Article 4.3 of the Charter.
**Article 4.4**

**Scope of local self government**

*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.*

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**Republic of Moldova** [Article ratified - Report adopted on 4 April 2019 ]

Under the law, the powers granted to local authorities are full and exclusive in the sense of Article 4.4 of the Charter, and the delegation did not hear specific complaints on this issue.

Consequently, the delegation believes that the Republic of Moldova complies with Article 4.4 of the Charter.

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**Article 4.5**

**Scope of local self government**

*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.*

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**Republic of Moldova** [Article ratified - Report adopted on 4 April 2019 ]

Under Article 4.5 of the Charter, “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”. As noted above, Moldovan local authorities may receive delegated powers by the central authorities on the basis of the law (Law no.436-XVI of 28.12.2006 and Law no.435-XVI of 28.12.2006). However, the delegation heard many complaints from local elected representatives that when this happens, they are not allowed discretion in adapting their exercise to local conditions. The discharge of these competences must be implemented strictly within the guidelines and directives issued by the central government.

In the light of the above, the rapporteurs are of the opinion that the Republic of Moldova does not comply with Article 4.5 of the Charter.

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**Article 4.6**

**Scope of local self government**
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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019]

This provision of the Charter deals with consultation and participation of local authorities in decision making. On the one hand, Moldovan legislation provides for the obligation to consult the local authorities and their associations: inter alia, Article 3 of Law No. 435 on Administrative Decentralisation; and Article 6 of Law No. 436 on Local Public Administration.

However, the overall impression of the delegation is that Moldovan local authorities are not regularly consulted in the adoption of legislation that affect their interests, and that they do not regularly participate in the decision making of state institutions on matters concerning them. This situation was one of the aspects analysed during the second fact-finding mission conducted by the Congress in the country in December 2017. On that occasion, the local politicians told the rapporteurs that the CALM is systematically excluded from governmental talks and negotiations in the field of local reforms. For instance, they claimed that the strategy on the reform of public administration was approved by a commission where there was not even one representative of the CALM.

During this monitoring visit, the local elected representatives met by the delegation insisted on the same points, although they conceded that there had recently been some minor changes. For instance, the government decided to organise some meetings, and the “parity commission” was not dismantled, as had been announced by the government. A “working group” to discuss further strategies and decentralisation initiatives was also anticipated. However, these slight changes are qualified as merely “political signs” by the CALM, and they do not constitute a true systematic change. In this respect, the local representatives (CALM and local elected representatives) that spoke with the delegation made two substantive claims:

the CALM does not influence legislation on matters affecting local interests in any way;

consultation is not systematic, but rather selective and limited. Important issues are not discussed with local authorities. They are only consulted on minor issues and on a selective basis.

For its part, the central government denied the claims formulated by the CALM and by other local elected representatives in this field. Government officials contended that a platform for the efficient communication between the government and local authorities had been created, to which the CALM was invited; that government officials hold regular meetings with mayors around the country; that the “parity commission” for decentralisation is working well; that the government holds one meeting every three weeks in different cities, in order to be closer to local authorities; that the government regularly hears and receives communications and complaints from local authorities; and that the government has offered the CALM the possibility to attend the regular, weekly meetings of the government (which are broadcast in streaming) and that the CALM has refused to attend those meetings. In conclusion, the government claims that there has been a great opening of the government for dialogue with the CALM, which has refused this invitation.

The impression of the delegation is that, beyond the existence of legal provisions requiring the effective consultation of local authorities, the extent and effectiveness of this consultation depends...
on many variables, such as the political orientation of the ruling government, the personal affinities between local and central rulers, or the will of certain politicians. The tone of interterritorial dialogue, in any case, seems to be at its lowest level in years. This situation falls short of what is required by Article 4.6 of the Charter.

In the light of the above, the rapporteurs conclude that the Republic of Moldova does not comply with Article 4.6 of the Charter.

**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.

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Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

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.

As noted above, the number and size of local authorities in the Republic of Moldova is unanimously perceived as a negative: there are too many first-level local authorities, and they are too small and weak in terms of finances and administrative and managerial capacity. This situation would be the ideal context for governmental policies or plans for amalgamations and mergers of local authorities. However, whether Article 5 of the Charter is currently respected in the Republic of Moldova is somewhat difficult to determine, because in recent years there have not been substantive alterations to local authority boundaries. Therefore, this provision could hardly be applied. During the meeting with the association of Raioane Councils, the rapporteurs were told that that the government is working on a project of merging the current Raioane to produce larger and more efficient units (7 or 8 districts), that the councils were involved in the discussions and that the Raioane bodies and the mayors were consulted regularly.

The previous monitoring reports of the Congress did not identify a definite problem in this respect. During this visit, the delegation did not hear any complaints from political leaders or associations on the possible non-recognition of this article in the current situation. In any case, there is no constitutional provision on the matter.

In conclusion, the Republic of Moldova complies with Article 5 of the Charter.

**Article 6.1**

Appropriate administrative structures and resources for the tasks of local authorities

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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

As a rule, Moldovan local authorities have the power to determine their own internal administrative structures, with due respect to statutory provisions and limitations. This is usually done through decisions of the local council, on the basis of a proposal from the mayor. The mayor, as the executive head, also has moderate powers to introduce changes and adaptations in the executive apparatus of the local authority.

However, this observation is mainly a legal one, because in the large majority of local authorities, the administrative and human resources are so reduced and weak that in reality there is almost nothing to determine or to adapt in order to ensure “effective management”. This aspect will be developed below.

In conclusion, and with this caveat in mind, the delegation considers that, at least in the law, the Republic of Moldova complies with Article 6.1 of the Charter.

Article 6.2
Appropriate administrative structures and resources for the tasks of local authorities

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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

The delegation has the clear impression that the present conditions of office of local government employees do not allow Moldovan local authorities to recruit high-quality staff; and that there are neither “adequate training opportunities”, nor “remuneration and career prospects”. In reality, the delegation was impressed to hear the testimonies and data provided by local leaders and by the national local associations on the matter. In many local entities, especially in the smallest ones, the number of staff members is very low, and they are poorly paid. Many local authorities do not have lawyers, architects or auditors, as would be required by some of the responsibilities put on the shoulders of local authorities by the law. For instance, the delegation was told that only Chișinău can afford to have internal auditors, the other local authorities cannot afford them. Most Moldovan local authorities are clearly understaffed. The delegation was told by local leaders that three quarters of all local administrative units have an average of six employees, and that 24% have four or fewer staff members.

Concerning salaries and wages for local employees, local governments have no discretion to decide on the remuneration of their staff. Salaries cannot be determined freely by the local authority, and
there is no individual or collective bargaining as the remuneration of local employees is rigidly regulated by national laws and regulations.

In this sense, local leaders made a double claim: first of all, salaries of local officials are very low, for instance a lawyer may be paid 100€ per month, a figure that appears to be extremely low. Another example, a local staff member of the municipality of Chișinău (clerical position) makes 100€/month, and an official may be paid 200€/month (one should remember that the city of Chișinău concentrates almost 70% of all local staff of Moldovan local authorities). This situation was qualified by some mayors as “unacceptable”. Secondly, the remuneration of the civil servants working in the central administration is much higher, which amplifies the salary gap. The example was given of the director of the state energy regulation agency, with a monthly salary of 3 000€/month.

There is low remuneration for local civil servants and officials, and the local authorities cannot afford better salaries for their staff. This unsatisfactory situation produces many negative results: on the one hand, this facilitates the spread of corruption. On the other hand, employees leave the local administration and local authorities have many vacancies that they cannot fill. There is also a more subtle consequence: the lack of specialised and qualified staff prevents many local authorities from fulfilling their responsibilities in an appropriate and professional way, and when they refrain from taking action or intervening in a given issue, mayors are prosecuted for prevarication by omission. An example was given of a case concerning the competences in the area of the protection of children. Under Law No. 140 of 2013, towns and villages must provide protection for children at risk and for minors who are abused or abandoned, but the local bodies do not have social workers, psychologists, etc. as needed to provide adequate protection to children. The delegation was told that in a couple of cases the mayors had been prosecuted for failure to take action in such situations. Another example of the impact of the lack of human resources in specific competences is that, under the law, the villages and towns are responsible for the inspection of buildings. However, most local authorities do not have specialised staff (for instance, architects) to discharge that function. Therefore, some local elected representatives told the delegation that in the Republic of Moldova the problem is not that local authorities want more competences, but that in reality there are some local competences that they do not want because they simply do not have the staff or the administrative capacity to discharge them. In recent years, the government has promoted new laws giving more responsibilities to local authorities, but no additional means (especially human resources) to discharge them.

Moreover, this lack of managerial and administrative capacity of most local authorities has been also detected and underlined by studies carried out by international organisations. A performance audit accomplished by the Court of Auditors and released in 2017 concluded that the staff of local authorities is poorly paid, that the employees frequently leave local offices and that there is a high level of turnover and unfilled vacancies.

Furthermore, villages and towns in Moldova are not autonomous in terms of human resources and in the management of their own staff. There is no “professional career” in the local sector in the country and working in local administration is usually unattractive for young, qualified people.

During the consultation procedure, the Government argued that its work agenda provides for a review of the wage system and uniformity of salaries in the budgetary sector, starting with the next budget cycle. It further claimed that the amendments made to the Law no. 355/2005 on the salary system in the budgetary sector of 26.07.2018 increased the incentive payments for civil servants dealing with a mandate obtained directly after the election, or indirectly, and contributed to the increase of their wages.
The rapporteurs come to the conclusion that Article 6.2 of the Charter is clearly not complied with in the Republic of Moldova.

**Article 7.1**

**Conditions under which responsibilities at local level are exercised**

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

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**Republic of Moldova** [Article ratified - Report adopted on 4 April 2019 ]

The compliance with Article 7.1 of the Charter in the Republic of Moldova was twice the subject of attention by the Congress in 2017, in connection with the fact-finding missions carried out in Chișinău (see point 3.4, above). The conclusions drawn during those visits was that, on paper, Moldovan legislation does provide for conditions of office of local elected representatives guaranteeing them the free exercise of their functions (Law No. 436 on Local Public Administration and Law No. 768 of 2 February 2000 on Conditions of Office of Local Elected Representatives).

However, and beyond this formal compliance, the Congress rapporteurs who carried out those visits were seriously concerned about the impact of local recall referendums on the “free exercise of functions”. Under Moldovan Law (Article 177 of the Electoral Code) a local referendum can be called by the council to recall or dismiss the mayor of a city or town. The reports and explanatory memorandums produced following these fact-finding missions already analysed in depth this peculiar feature of Moldovan legislation, so there is no need to carry out another extensive explanation of what was said at that time. In addition, and as a consequence of this monitoring visit, the delegation learned that there is specific case law of the Constitutional Court that has determined that local recall referendums are not unconstitutional, “given that under the constitution, the mayor is elected by the citizens, it is them (the local community) who are the competent subjects, under the law, to decide the revocation of the mayor” (Ruling 13/2002 on local autonomy, paragraph 7, applicant: Parliamentary faction).

Despite the fact that this mechanism may comply in abstracto with the Moldovan Constitution, the delegation understands that it contains unsatisfactory aspects which might go against the Charter, at least in the way that the mechanism is regulated in domestic legislation. The most important one is that the grounds or reasons for activating such a mechanism do not meet appropriate standards of certainty. In other words, the local recall referendums may produce a serious dysfunctioning of local democracy, for mayors work under the permanent “sword of Damocles” of a revocation referendum. In addition, the law leaves the door open to organised factions of citizens, who may want to use this mechanism in a perverse way to revoke a mayor. Finally, there are still negative outcomes and open questions in the practical application of this instrument. For instance, what happens if the local referendum is “successful” and later the suspended mayor is judged on the merits and acquitted by a court? In this case he or she would have been removed “by the people” on the basis of accusations that eventually turned out to be unfounded. In the light of the above considerations, the delegation understands that it would be advisable to revise the current legal scheme governing local recall referendums, in order to provide for more certainty and predictability of the grounds for calling those referendums; to ensure the participation of the mayor in the preceding electoral campaign, and to avoid distorting consequences of the application of this instrument in local democratic life.
Another matter of concern in connection with Article 7.1 is the political and judicial context surrounding the discharge of mayoral functions. Claims have been repeatedly made by the CALM and by local representatives that there is a systematic and unfair use of the opening of criminal files (dossar penale) against mayors, who are later suspended from office and even subject to restrictions of liberty. The monitoring visit has confirmed the existence and seriousness of that pattern, which de facto weakens the “free exercise” of functions by local elected rulers (see point 6 of this report, below).

In conclusion, Article 7.1 is not respected in the Republic of Moldova.

**Article 7.2**

**Conditions under which responsibilities at local level are exercised**

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.

**Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]**

The testimonies, data and information collected by the delegation on this point clearly show that, at present, the conditions of office for local elected representatives do not provide for appropriate financial compensation. In fact, the remuneration awarded to mayors is extremely low, which results in the economic situation of the local officials and civil servants analysed above. This has been a structural complaint made by the CALM association in recent years. The following figures were given to the delegation during their visit: the Mayor of Chișinău, the largest and most important city in the country, has a salary of 400€/month, which seems to be extremely low; a regular mayor may earn about 200€ or 300€/month. In 2015, the situation was even worse, and the salary for the mayor of a small to medium sized town was 2 800 lei (about 130€/month), but the mayors went on strike and the then Prime Minister Filat increased the salaries to 200€/month, the present average figure.

A president of a Raioane Council also receives approximately 300€/month. Many mayors have to work part time in other professional activities, such as teaching, or running their own private businesses. This prevents many mayors from discharging their duties in a professional manner. Moreover, those salaries are strictly determined and regulated by national laws and regulations, therefore there is no possibility for local councils or bodies to establish a higher or different level of remuneration for mayors or for the presidents of the Raioane Councils. These figures speak for themselves and they create many ancillary problems, for example the difficulty to get young and qualified people involved in local politics and the lack of professionalism in local management. In addition, this creates fertile ground for the spread of economic corruption.

In the light of the above, the rapporteurs conclude that Article 7.2 is violated in the Republic of Moldova.

**Article 7.3**
Conditions under which responsibilities at local level are exercised

Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

The Law on Local Public Administration and the Law on the Conditions of Service of Local Representatives regulate what functions and activities are deemed to be incompatible with the holding of local elective office.

Consequently, Article 7.3 is respected in the Republic of Moldova.

Article 8.1
Administrative supervision of local authorities' activities

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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

In the Republic of Moldova, the oversight and supervision of local authorities are not regulated in the constitution, but by regular statutes and administrative regulations, that lay down the cases and the procedures under which this supervision can take place. At least on paper, the supervision of local authorities by the state ministries and departments is limited and strictly regulated by law.

To begin with, it should be noted that this supervision is not carried out by the districts (Raioane), or by any sub-state authority, since there are no regions in the country except in the case of Gagauzia. Therefore, the control and supervision of local authorities are exclusively carried out by the state authorities. From this perspective, supervision of local authorities is carried out by different governmental bodies and authorities, and there is no central Department on Public Administration or on Local Authorities, a situation that was identified by the previous Congress monitoring reports as a weakness in the Moldovan system. In Recommendation 322 (2012), the Congress recommended that the Moldovan authorities establish such a department (point 6.b), but this recommendation has not been followed. Moreover, the structure of the central government was recently streamlined and the number of central departments was dramatically reduced, so there is no prospect that in the short or middle term a Department on Public Administration or on Local Authorities will be established in the country. According to central government officials, the fact that local government issues are handled in the State Chancellery is a better option than having a specific ministry working on the subject.

At present, the key bodies for the supervision of local authorities are the State Chancellery and the Ministry of Finance. The State Chancellery is the body that concentrates the most important powers in the field of local government and decentralisation and it co-ordinates all issues dealing with local
governments. The State Chancellery has the power to validate the legality of the acts and decisions of the local authorities, something it does through its regional offices.

The Ministry of Finance also plays an important role in administrative supervision, but it is limited to financial and fiscal issues. According to Article 78 paragraph (4) letter a) of the Law no.181 of 25.07.2014 on public finances and budget-fiscal responsibility, the financial inspection shall be initiated: a) at the request of the Prime Minister; b) by the Minister of Finance, who, through the responsible administrative authority under the Ministry of Finance, plans financial inspections based on the assessed risks related to the activities of the budgetary process and the subjects mentioned. While the local authorities are free to approve their own annual budgets, they are required to send a copy of those budgets to the ministry. However, this body does not approve or amend the local budgets, it keeps them for information-gathering purposes and for the analysis of the evolution and trends of the public sector. A “financial inspectorate” of the Ministry of Finance may conduct inspections in any local authority in the country. This financial inspectorate may decide to audit any local authority according to their own discretion, plans and strategies. As a result of those inspections, the financial inspectorate may impose fines on a local authority. The prime minister may also order that such an inspection be carried out in any local authority, something that, in the political context of the country, may be used as a tool to threaten or exert undue pressure on local bodies. Ministry of Finance officials conceded that the system is not efficient and does not work correctly, and they want to revamp it.

The Ministry of Agriculture, Regional Development and Environment plays a minor role in this respect, and its intervention is limited to the co-ordination and implementation of development projects, infrastructure and planning. Outside the executive branch, the Court of Accounts of the Republic of Moldova plays a fundamental role in the administrative oversight of local authorities. The Court of Accounts, regulated by Article 133 of the constitution, performs an important role in the control of local accounting and public expenditure, a role that has been reinforced by recent measures adopted in the wake of the economic crisis and the fight against corruption. The Court of Accounts is an independent agency that reports to the parliament. It has the legal power to audit any body or entity in the public sector, which gives it the power to audit local entities as well. In fact, there is a special division in the Court of Accounts dealing with local governments. In carrying out its functions, the Court of Accounts performs financial audits and issues recommendations. It may also refer to the prosecutor if mismanagement or misappropriation is unveiled as a consequence of the audit.

The most worrying part of this system is that the Court of Accounts unfortunately has insufficient human and administrative resources to audit all the Moldovan local authorities. In fact, the Court of Accounts audits only a small number of local authorities (usually the largest ones), in a selective or “strategic” manner and following their own policies and auditing strategies. The Court of Accounts has developed its own strategic programmes for auditing at local level and so far it has focused only on “systemic” issues. This means that a large part of Moldovan local authorities (especially the small ones) are not audited on a regular basis by the Court of Accounts. The Court of Accounts has no power to impose a course of action on the local authorities that have been audited, but it can address reports and recommendations to them (the representatives of the Court of Accounts reported that only 37% of their recommendations are followed and implemented by local authorities).

In many local authorities there is no system of internal control or audit mechanism (finance control, audit commission, control services, etc.), for the simple reason that, as mentioned above, the local authorities do not have the adequate staff to assume this task. Furthermore, they do not have the means to hire private sector sworn auditors to audit their accounts.
There are also extraordinary measures that can be adopted by state authorities in this respect. For instance, the control exercised by the public prosecutor and by criminal courts. As discussed in other parts of this report, a structural pattern in the Moldovan system of local government is the important and very frequent intervention of the prosecutors and the judiciary in the day-to-day activities of local authorities. Mayors and council members/presidents are often subject to investigation, indicted, and on this basis suspended from office by the court (or even subject to measures of restriction of freedom). This produces a fundamental disruption in the work of local authorities, although in strict terms this situation does not fall into the scope of Article 8.1.

In view of the above, the delegation considers that Article 8.1 is respected in the Republic of Moldova.

**Article 8.2**

**Administrative supervision of local authorities' activities**

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.

**Republic of Moldova** [Article ratified - Report adopted on 4 April 2019 ]

These two points will be considered jointly since they are strongly related. There are two key legal provisions in this field: on the one hand, Article 6.3 of the Law on Local Government establishes the principle of autonomy, legality and no subordination relationships between the central and local authorities. The controls exercised by the state must be only controls of legality, while controls of expediency can only concern delegated powers and competences. On the other hand, Article 7.2 of the Law on Administrative Decentralisation provides for the principle of no interference of central authorities in the activities of the local administrations. Beyond these legal provisions, the delegation could appreciate that the current system of interadministrative control by state ministries is a source of permanent concern or controversy on the part of local authorities. Most of the interlocutors told the rapporteurs that there are too many cases and circumstances of control, and that in many cases this is not just a control of legality. They claim that since a new act was passed in 2017 these controls have been reinforced, and that now they can consist of checks by the State Chancellery, inspections by the Financial Inspectorate of the Ministry, audits by the Court of Accounts and referrals to the public prosecutor.

In particular, they claim that the State Chancellery checks the legality of actions by local authorities in delegated tasks, but that they also perform in practice an assessment of the appropriateness or opportunity of the local measures when local authorities act in the field of their own competences. Furthermore, in doing so they allegedly implement a broad interpretation of the legal system, disregarding the local autonomy and the powers of the local authorities. For instance, the officers of the State Chancellery can examine the accuracy of a mayor’s decision to sell or not to sell an asset; to distribute bonuses or not, etc. Urban planning and urban management are apparently an area where this control is more severe. Local representatives told the delegation that in many local authorities the State Chancellery has modified the legal status of many local properties (even public parks) changing them and converting them into state properties (which are later privatised). They
claimed also that the government unilaterally marks the limits of the municipal and state land properties, where those two types of real estate public property are not delimited.

During the consultation procedure, the government pointed out to the revision of the control and transparency mechanisms, based on the Law no.161 of 07.07.2016 on the amendment of some legislative acts (which will enter into force on 28.10.2018). It informed the rapporteurs that a series of regulations were introduced to publicize the activity of the local public administration authorities by using the information platform (the State Register of Local Acts). It would also publicize the activity of the territorial offices of the State Chancellery, which will control the administrative acts through the same Register. The government stressed that all interested persons will be able to view any local public administration act placed in the system at any stage of verification procedure.

However, in the rapporteurs’ view, this information does not bring anything new to the conclusions of the report.

Apparently the situation has not improved since the last monitoring report of 2012, where it was found that there was a lack of regulations for expediency checks carried out by the central government bodies and it was recommended that the supervision over local authorities should be reduced in order to satisfy the requirements of Article 8.3 of the Charter. The tendency of widespread administrative controls seems to have been reinforced during recent years.

In the light of the precedent, the rapporteurs find a violation of Article 8.2 and Article 8.3 of the Charter.

**Article 8.3**

**Administrative supervision of local authorities' activities**

*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.*

**Republic of Moldova** [Article ratified - Report adopted on 4 April 2019 ]

Consult reply indicated at article 8.1

**Article 9.1**

**Financial resources of local authorities**

*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.*
These three indents of the Charter should be analysed jointly since they are interrelated and in summary they require the sufficiency of financial resources for local authorities. Before analysing these provisions, it is important to stress two important points. On the one hand, it should be underlined that the Moldovan Constitution, although it devotes several provisions to local government, does not include any paragraph or indent on the issue of the financing of local authorities. The only reference to local finances is to be found in Article 131.5, which states that “the district, town and village budgets shall be drafted, approved and carried out in accordance with law”, which is basically an empty provision. The same is true for Article 132.1, which provides that, “all taxes, duties, other revenues of the state budget and of the social insurance budget, as well as of the district, town, village budgets are established under the law by the competent representative bodies”. Therefore, the principles of sufficiency and commensurability of local finances, as well as the buoyancy and variation of those resources, are not recognised in the constitution. Moreover, the Constitutional Court has not issued any ruling on the issue of local financial autonomy.

Consequently, the regulation and structure of local financing is left totally in the hands of the legislature and of the government. In this field, the most important pieces of legislation on this matter are the Law No. 397-XV on Local Public Finance of 16 October 2003; the Tax Code of the Republic of Moldova No. 1163 of 24 April 1997, the Law No. 847-XIII on the Budget System and Budgetary Process and the Local Public Administration Act of 2006.

In the area of budgeting and expenditures, villages and towns are free to draft and to approve their own budgets, a process that is governed by the Public Finances Act. The local council is the competent authority to approve the budget. Local authorities are in theory autonomous in deciding their spending priorities (at least with their “own revenue”), and in principle the central government or other state authority cannot interfere with municipalities’ budgetary autonomy. In this sense, state institutions are not allowed to interfere with the drafting and execution of local budgets. As noted above, once the local annual budget is approved it must be forwarded to the Ministry of Finance, but this body does not carry out any formal approval or amendment of the budget.

The general situation of local finances in Moldova has recurrently been evaluated as poor by the Congress. Thus, in Recommendation 179 (2005) on local democracy in Moldova, the Congress introduced several recommendation and points in this field, and went on to note, among other things, “the very limited extent of local financial autonomy in Moldova and the almost total lack of freedom on the part of local authorities to decide on financial matters” (point 8.c.i). And in Recommendation 322 (2012), the Congress also observed several unsatisfactory aspects in this respect (point 5, c-e). The rapporteurs did not see any substantial improvement during their visit. Moreover, in a report made in 2017, the Court of Auditors of the Republic of Moldova concluded that local authorities are totally dependent on the central government.

In the Republic of Moldova, the main sources of local revenue are the following:

- own revenue (local taxes and fees). Local taxes will be addressed in more detail below;
- shared taxes and fees;
- special means (special funds);
- transfers (from the state budget). In the Republic of Moldova, most of the revenue of local authorities comes from transfers granted by the central government. These transfers will be analysed at point
According to figures provided for the Ministry of Finance for the last three years, the revenue structure of local authorities can be broken down as follows: in 2015, the total revenue for local budgets was 11 039 million lei, of which “own revenue” represented 981.7 million lei (8.9% of revenues); the share in state taxes was 1 901 million lei (17.2%) and the total transfers were 7 504 million lei (68% of total revenue), including “general purposes transfers” to the amount of 852.9 million lei (7.7%). In 2016, the total revenue for local budgets was 12 053 million lei, of which “own revenue” represented 1 022 million lei (8.5% of revenue); the share in state taxes was 2 272.1 million lei (18.9%) and total transfers were 8 263.7 million lei (68.6% of total revenue), including “general purposes transfers” to the amount of 1 082.6 million lei (9%). In 2017, the total revenue for local budgets was 13 461 million lei, of which “own revenue” represented 1 280.4 million lei (9.5% of revenues); the share in state taxes was 2 171.2 million lei (16.1%) and the total transfers were 9 552.5 million lei (71% of total revenue), including a “general purposes transfers” to the amount of 1 211.1 million lei (9%).

Two preliminary conclusions can be drawn from these figures. First, that the proportion of “own revenue” in the budgets of local authorities is very low. Second, that local authorities are primarily funded through transfers granted by the state. The major part of local revenue in Moldova is represented by intergovernmental transfers and shared taxes and none of these sources are under the control of local authorities. These preliminary findings clearly go against the requirements of Articles 9.1 and 9.3 of the Charter.

The most important budget expenditures of local authorities in 2015 were as follows:

- first-level local authorities: a. education: 37%; b. general purpose state services: 12%; c. environmental protection: 12%; d. transport, roads and streets: 12%; e. culture, arts and sports: 12%;

- second-level local authorities (Districts-Raioane): a. education: 52%; b. general purpose state services: 16%; c. social assistance: 8%; d. communal households: 7%. A clear picture emerges from these figures: education is the greatest expense of local authorities, but they have no power over the salaries of their employees (including teachers), since they are determined by the central government. They have little over social policies, too. Consequently, public finances are still centralised to a large extent.

Several indicators make it possible to assess the degree of fiscal decentralisation in the country. To begin with, the weight and importance of local budgets. In this area, the budgets of Moldovan local authorities are very low in comparison with European standards, according to experts and international organisations, and even the Ministry of Finance. For instance, the delegation was told that the total budget for expenses in the City of Chișinău is roughly €50 million, which is a small amount for such a big and important capital city. Another indicator is the share of local government expenditure in the total public sector expenditure. According to the data provided by the Ministry of Finance, this percentage was 24.8% in 2015, 23.2% in 2016 and 24.3% in 2017. These data may seem to be positive in the European context, but it should be remembered that there are no regions in the country (except the ATU of Gagauzia), therefore, the roughly 75% of public expenditure is still made at central level.
The fact that the system of local financing is insufficient and unsatisfactory is not only a recurrent claim of the CALM and local representatives; but it was also admitted by government officials during the meetings that the delegation had in Chișinău. According to the Ministry of Finance, the sources of revenue are not sufficiently diverse. Local finances are hit by different structural problems, such as the lack of resources for capital investment and the low level of collection of own revenue. Most of the Moldovan local authorities are underfunded, and the vast majority does not collect own resources to cover even its operational costs.

Officials from the Ministry of Finance also informed the delegation that in the last couple of years the government has adopted several initiatives to improve the situation of local finances. For instance, Law No. 281 of 16 December 2016 increased the maximum tax rate for housing real estate from 0.3% to 0.4%. And Law No. 288 of 15 December 2017 granted local authorities the right to determine the degree of completion of the construction for tax purposes based on the method established by the central specialised body, and the right of local authorities to decide whether to exempt certain individuals from the tax on real estate. They added that local authorities do enjoy discretion in the use of their own resources. The prioritisation and use of the available financial resources rests exclusively with local public authorities. The existence of local entities with low financial potential is the consequence of the underdeveloped economic base (potential taxpayers), which is due mainly to the existence of too many local authorities with a small population.

During the visit, the Ministry of Finance conceded that the situation is unsatisfactory, but pointed out that the economic situation of the country is also bad; that there is a high rate of tax evasion and corruption, and that the taxable basis of many local authorities (especially the small and medium-sized ones, and those located in rural areas) is very limited because of the poor economic structure in the country. Consequently, changing the regulatory framework to reinforce the fiscal autonomy of local government would not make a real change, because there is not very much to be taxed at local level. Therefore, the economic situation of local authorities seems to be a vicious circle: it is closely linked with the overall economic situation of the country, and will not change until the economic situation of the country improves significantly.

During the consultation procedure, the government pointed out that in the context of the National Decentralization Strategy a new system of local public finances was introduced in the Republic of Moldova, which radically changed the way of financing local self-government, the budgetary relations between the national budget and local budgets of all levels. The government evaluates this new financial system as transparent, predictable and offering greater autonomy to local budgets and some incentives for local revenue growth.

Regarding local elected representatives’ position on the matter of finances, they unanimously stated that in general terms they were highly unsatisfied with the present arrangements. First, they complain that local authorities are clearly underfunded and they depend on transfers granted by the state. For instance, only 10 towns in Moldova collect enough resources to pay the salaries of their staff. All the rest have recourse to state transfers to pay its human resources and operational expenses. Second, they complained that the current system of transfers is also unsatisfactory, for the reasons that will be stated below. Finally, in too many cases, the law attributes new competences to local authorities without providing for new and adequate financial resources.

Finally, concerning municipal property, Moldovan local authorities have their own property, goods and assets. Their right to own land and real estate property is fully recognised, and they are free to manage their own assets and properties. For instance, they own the local streets, roads, parks, cemeteries, administrative buildings and facilities, schools, kindergartens, culture clubs, libraries, sport facilities, etc. One of the main problems in this regard, however, is that in many places the municipal land is not delimited appropriately from private or state property. Consequently, the
land units cannot be evaluated for tax purposes and the local authorities thus lose an important source of potential own resources.

In view of all these considerations, the rapporteurs conclude that Article 9, paragraphs 1, 2 and 4 of the Charter are violated in the Republic of Moldova.

Article 9.2
Financial resources of local authorities

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

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

Consult reply indicated at article 9.1

Article 9.3
Financial resources of local authorities

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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

First-level Moldovan local authorities can perceive local taxes and fees, while second-level authorities have no taxes of their own but can collect fees, for example for water distribution and waste-water treatment.

All local authorities also have a share of some state taxes (shared taxes), the most important being the personal income tax (PIT). In reality, these “shared taxes” can be categorised both as “transfers” and as “equalisation mechanisms” since the local entities have absolutely no power to regulate, manage or collect those taxes. They are the exclusive responsibility of the state, which later on redistributes all or part of the taxes collected to the local authorities.

As for local taxes and fees, and according to Article 6, paragraph 6, of the Tax Code No. 1163-XIII of 24 April 1997, the system of local taxes and fees includes: a. real estate tax; b. taxes on natural resources; c. land-use tax; d. fees on the organisation of auctions and lotteries on the territory of the administrative territorial unit; e. taxes on advertising; f. taxes on the application of local symbols; g. taxes on commercial units and/or service provision; h. market taxes; i. accommodation taxes; j. resort fees; k. taxes for the provision of passenger transport services on municipal, town and village (communal) routes; l. parking fees; m. taxes from dog owners; n. sanitation fees; o. ad unit fees.
Several remarks should be made on this enumeration. First, that taxes and fees are regulated in the same text, without any clear distinction. Second, this enumeration does not mean that all these fees exist in all Moldovan local authorities, but only in those who have decided to create and collect them. Third, that the most important “local” tax is the real estate tax, which is in reality probably the only genuine “local” tax in Moldova. It is regulated by state law but leaves some discretion to the local authorities to set the tax rate and grant tax exemptions.

Regarding the discretion and the room to manoeuvre that local authorities enjoy in regulating their “own” taxes, the system can in short be presented as follows: a. as a general rule, the local tax rate is set by the local authority according to the characteristics of the taxation objects, without the existence of a tax ceiling. Local authorities may grant additional exemptions from paying local taxes. b. In the case of real estate tax, the exact quota is established annually by local councils, based on the minimum and maximum quota set in the Tax Code. Local authorities (councils) can also grant additional tax relief on real estate (tax exemptions or deferrals) under the conditions set by Article 284 of the Tax Code. According to the Ministry of Finances, the government has recently promoted several changes in the field of local taxation, the most important being the abolition of caps or limits on real estate tax. Apparently the local authorities hesitate to raise their taxes, however.

Different structural problems affect the system of local taxation: a. lack of information about taxpayers and the resulting tax evasion; b. non-delimitation of many local properties, whose ownership is disputed, which negatively affects the collection of real estate tax; c. lack of significant taxable transactions or events. Therefore, the possibility of expanding the local tax base is very limited; d. the fact that many local properties are not registered in the cadastre (apparently, only 20% of local assets have been registered with the Cadastre Agency). Many properties are not evaluated for tax purposes, and therefore real estate tax cannot be collected on them.

The Moldovan system for local taxes has been consistently assessed as weak, and the present visit highlighted the fact that the structural situation has not improved. In the light of this fact, the rapporteurs consider that the requirements of Article 9.3 of the Charter are not satisfied.

**Article 9.4**

Financial resources of local authorities

*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.*

**Republic of Moldova** [Article ratified - Report adopted on 4 April 2019 ]

Consult reply indicated at article 9.1

**Article 9.5**

Financial resources of local authorities
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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019]

This provision of the Charter deals with the equalisation of local finances, “which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support”. In the Republic of Moldova, the equalisation system for local authorities operates through two mechanisms:

on the one hand, by the share or participation that local authorities have in the PIT that is collected in their territories. Roughly one quarter of total local-government revenue comes from PIT sharing, which is a state tax. There are different shares or percentages of the overall state taxes collected that are transferred to the different local authorities according to their type (villages, communes, cities, municipalities and districts). This share ranges from 20% to 75%. In the case of villages and cities that are centres of the Raions, this percentage is 20%. For the towns and cities with the status of municipality, that percentage is 75% of the PIT collected on their territory. Balti receives 45% and the Chișinău municipality 50%. Therefore, an important part of PIT is redistributed to local authorities;

on the other hand, by general balance transfers (de echilibrare), which are calculated on a formula basis, distinct for local authorities of first or second level. For first-level authorities (towns, cities and villages), these transfers are calculated according to a formula that uses several indicators: the fiscal per capita income, determined according to the income obtained from PIT; the population and the area of the local entity. The allocation of transfers pays particular attention to the poorest local authorities and is carried out in inverse proportion to the fiscal capacity per inhabitant and in direct proportion to the population and area. For second-level bodies (districts-Raioane), these transfers are calculated according to a formula where two indicators are used: the population and the district size.

According to the representatives of the Ministry of Finance with whom the delegation met during the visit, the system implemented so far has focused on maintaining the financial capacity of local bodies, and is based on the principles of decentralisation, territorial cohesion (solidarity) and the ensuring local resources correspond to local competences. The new system of local public finances allegedly ensures that the vast majority of local authorities preserve their financial potential, at least at the level achieved in the old local budgeting system.

In light of these facts, the rapporteurs conclude that, although the system could be improved Article 9, paragraph 5, of the Charter is respected in the Republic of Moldova.

Article 9.6
Financial resources of local authorities

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

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

According to this provision of the Charter, local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them. According to the CALM and other local leaders and representatives, local authorities are not consulted by the central government on the way in which redistributed resources are to be allocated to them. Moldovan local authorities are not consulted by state bodies and institutions regarding financing. The general system for local-government consultation and participation in the decision making of state bodies has already been presented, with generally unsatisfactory conclusions (see point 4.3.6, above). Therefore, this lack of consultation may not be an exception in a very sensitive area such as financing.

Consequently, the rapporteurs believe that Article 9, paragraph 6, of the Charter is not respected in the Republic of Moldova.

Article 9.7
Financial resources of local authorities

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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

As noted above, grants and transfers from state budget constitute the fundamental source of revenue for Moldovan local authorities. Basically, there are two types of transfers: the transfer for general purposes and transfers for specific purposes.

In the last four years, the figures concerning the total transfers granted by the state to the local budgets can be broken down as follows:

in 2015, the total amount of transfers was 7 504 million lei, of which 852.9 million lei (11.4%) were general purpose transfers (echilibrium), and 6 651.1 million lei (88.6%) were special purpose (earmarked) transfers;

in 2016, the total amount of transfers was 8 263.7 million lei, of which 1 082.6 million lei (13.1%) were of general purpose transfers (echilibrium), and 7 181.1 million lei (86.9%) were special purpose (earmarked) transfers;

in 2017 the total amount of transfers was 9 552.5 million lei, of which 1 211.1 million lei (12.7%) were general purpose transfers (echilibrium), and 8 341.4 million lei (87.3%) were special purpose
These figures seem to indicate that most of the transfers granted by the state are earmarked, or for specific purposes. In this sense, there are different special funds, from which local authorities may receive specific grants: a. the regional development fund; b. the environmental fund; c. the energy efficiency fund; d. the special fund for construction and maintenance of roads. The Raions receive money from this fund, according to a number of lei per km.

The local authorities have no power of decision regarding these transfers, and the arrangements in place do not therefore meet the requirements of Article 9.7 of the Charter.

According to local government representatives, local authorities do not participate in decisions regarding these funds, since they are granted on an ad hoc basis by the line ministries according to criteria that are neither clear, stable or transparent. The CALM and several local leaders have recurrently complained that local authorities are clearly underfunded and that they depend on the transfers granted by the state. Furthermore, they have complained that the current system of transfers is also unsatisfactory, essentially for two reasons. First, most of transfers are earmarked, meaning they are granted for specific purposes (for instance, paying the salaries of local teachers). Second, when transfers are supposed to finance new investments for infrastructures, new facilities or the paving of streets or roads, the system lacks transparency and is allegedly politicised in the sense that local authorities whose mayor belongs to the ruling political party (the Democratic Party) have better chances of obtaining financing than local authorities that are run by other parties. Although the second claim cannot be formally proved by factual data, the first one sounds plausible, in the light of the figures provided by the Ministry of Finance.

Government officials disagreed with the contentions of the CALM. On the one hand, they stated that the share of local authorities own revenue has remained relatively stable over the years. On the other hand, they explained that the lack of discretion in the use of special-purpose transfers is set out in the law. The Local Public Finance Act defines “special-purpose transfers” as financial means allocated from the state budget, conditional upon and linked to ensuring the performance of public functions or for other special purposes. According to another norm of the act cited, these transfers can only be used for a specific, predetermined purpose and are to be returned to the state budget otherwise. However, these replies from the government do no mitigate the situation, as illustrated by the eloquent figures provided above.

Consequently, the rapporteurs conclude that Article 9.7 of the Charter is infringed in the Republic of Moldova.

**Article 9.8**

**Financial resources of local authorities**

*For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.*

**Republic of Moldova** [Article ratified - Report adopted on 4 April 2019]

This provision of the Charter states that for the purpose of borrowing for capital investment, local
authorities shall have access to the national capital market within the limits of the law.

Moldovan local authorities have recourse to borrowing from private or public banking institutions. The Law No. 397/2003 on Local Public Finance allows local authorities to borrow for capital purposes both domestically and abroad, as well as to grant guarantees on loans to municipal companies. However, according to Law No. 419/2006 on Public-Sector Debt and Government Guarantees, local authorities are required to obtain the prior approval of the Ministry of Finance before borrowing (loans for one year and more). Between 2016 and 2018, eight local authorities received approval from the Ministry of Finance to borrow from banking institutions and three local bodies did not.

If a local authority has payments overdue on existing debt, it may not contract any new debt, except for the purpose of restructuring the unpaid obligations. There is also a cap on credit operations for local authorities such as debt service, including repayment of principal and interest for existing debts (20% of annual municipal revenues). This legal amendment (adopted in 2014) is in keeping with the will of the government to keep local debt in line with international standards, and with the recommendations of the World Bank missions and EU experts. Moreover, local authorities are obliged to keep a debt registry and a guarantees registry in order to keep track of their direct and conditional obligations.

According to provisions of Law No. 419, the Ministry of Finance monitors the situation of public-sector debt. All public-sector entities (including local authorities) must therefore send the Ministry of Finance, on a quarterly basis, the information necessary to monitor the contracting, disbursement and repayment of public-sector debt. The Ministry of Finance then presents the government and parliament with a quarterly and an annual report on the situation of public-sector debt. Reports are published on the website of the Ministry of Finance. As of March 31 2018, the local public authorities' debt stood at 0.23% of GDP.

During the visit, the delegation was told that, although local authorities have access to the national capital market within the limits of the law, they rarely ask for loans from the private sector, because interest rates in the country are very high (between 10% and 20%), and consequently are dissuasive. At the same time, banking institutions are well aware of the financial situation of most Moldovan local authorities, and know that their cash-flow capacity and their room for manoeuvre in paying off loans is very limited. The national capital market is therefore an infrequent source of funding for local authorities in Moldova.

Therefore, and in the light of the country’s economic situation, the rapporteurs are of the opinion that Article 9.8 is respected in the Republic of Moldova.

**Article 10.1**

**Local authorities' right to associate**

*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.*

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**Republic of Moldova** [Article ratified - Report adopted on 4 April 2019]
This provision of the Charter deals with intermunicipal co-operation and provides that 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. In the Republic of Moldova, the right of local authorities to associate among themselves and to form common platforms and structures for the joint provision of local services is fully recognised in the domestic legal system. In this sense, local governments (towns/cities) can freely form consortia and associate to provide common services. This is mostly used in the field of communal services (water supply, waste management, road maintenance, etc.). The legal basis for intermunicipal co-operation is the Law No. 436/2006 on Local Public Administration. Article 14 thereof regulates the powers of local councils and stipulates that local authorities can, within the conditions set by law, “form an association with other local public authorities, including from abroad, to conduct works, and to provide services of public interest, to promote the interest of local public authorities, as well as to co-operate with businesses and NGOs from the country and abroad to implement action and works of common interest”.

Article 5 of Law No. 435/2006, on administrative decentralisation, also provides that local authorities can co-operate in the implementation of their competences, by setting up joint services and works. In this sense, the towns/cities usually establish joint municipal enterprises or joint stock companies, where all participating municipalities are founders.

While intermunicipal co-operation is indeed a reality in Moldova and there are a number of joint projects, it is not very developed in comparison with European standards. Intermunicipal co-operation appears to be facing some problems, among which stands a partisan conception of politics. The delegation was informed that in many cases mayors are not willing to co-operate with neighbouring cities if they are run by a different political party. The Ministry of Agriculture and Regional Development actively encourages local authorities to co-operate with each other and to create intermunicipal corporations. Furthermore, the model regulation on municipal companies was amended recently by the government to allow several municipalities to found joint municipal corporations.

Consequently, Article 10.1 of the Charter is respected in the Republic of Moldova.

**Article 10.2**

**Local authorities’ right to associate**

*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.*

**Republic of Moldova** [Article ratified - Report adopted on 4 April 2019 ]

“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”.

In the Republic of Moldova, local authorities are entitled to set up associations for the protection and promotion of their common interest, and to join or withdraw from existing associations. Moldovan
Local authorities are also free to join international associations of local authorities. In the country there is one comprehensive association of local authorities, the Congresul autoritatilor locale si regionale din Moldova (CALM) which stands literally for “Congress Local and Regional Authorities of Moldova”.

Based on the principle of voluntary membership, the CALM was founded in the 90s and its members currently include about 800 local authorities of first and second level, out of the current 898 entities. The CALM is far and above the most important national association that defends and represents the interests of local authorities. It is supposed to act as a local intermediary in dialogue with the government and lobbies in favour of local interests. Apart from its purely representative tasks, the CALM carries out different activities of common interest and provides assistance and help to local governments, such as legal and fiscal advice and technical support.

In addition to the CALM, other networks or co-operative schemes exist among local authorities in the country, with varying degrees of formality and relevance, such as the Association of District Councils or the Association of City Mayors, but their social and political relevance is much more limited. The delegation also held meetings with these associations and networks (see the programme of the visit in the appendix).

Consequently, Article 10.2 of the Charter is respected in the Republic of Moldova.

Article 10.3
Local authorities’ right to associate

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.

Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]

This provision of the Charter deals with transfrontier co-operation, and provides that local authorities shall be entitled, under such conditions as may be provided for by law, to co-operate with their counterparts in other states. The possibility for Moldovan local authorities to co-operate with their counterparts in other states is recognised in Moldovan legislation on local government. Namely, Article 14.1 of Law No. 436/2006 on Local Public Administration enables co-operation with municipalities abroad: local councils can establish co-operation projects, including cross-border ones and town twinnings with other towns abroad. In practice, there are many projects and activities involving cross-border co-operation, especially in the framework of cross-border co-operation programmes supported by the EU (Moldova, Ukraine, Romania). According to Romanian legislation, municipalities can finance joint projects with municipalities in Moldova using their local budgets. This is another way to realise for cross-border co-operation between municipalities, which is fostered by the common heritage of these two countries.

As noted above, the Republic of Moldova has signed and ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities; the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities; and Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation. However, it
has not yet signed Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECG).

Consequently, Article 10.3 of the Charter is also respected in the Republic of Moldova.

**Article 11**

**Legal protection of local selfgovernment**

*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.*

**Republic of Moldova [Article ratified - Report adopted on 4 April 2019 ]**

The analysis of the legal protection of local self-government in the Republic of Moldova should consider two different aspects: regular access to ordinary courts and access to the Constitutional Court to defend the principle of local self-government. Concerning the first aspect, Moldovan local authorities do enjoy locus standi to go to courts in order to defend their rights, property or interests, just as any other legal person may. Therefore, towns, villages, municipalities and Raioane can have access to the regular courts, where they can defend their interests and rights. In this matter, the delegation did not hear any complaints from local leaders and representatives.

The Constitutional Court is regulated by Article 134 et seq. of the constitution, which describes the Constitutional Court as the “sole authority of constitutional jurisdiction in the Republic of Moldova”. Among other functions, it exercises the review of constitutionality of laws and decisions of the parliament, presidential decrees and decisions and ordinances of the government. The Moldovan Constitutional Court follows the so-called “Kelsenian” type of constitutional jurisdiction, that carries out a concentrated and abstract control of constitutionality of laws and regulations, and can ensure that the legal order contains only rules that respect the constitution.

At present, Moldovan local authorities are also authorised to appeal to the Constitutional Court if they think that the constitutional and legal principle of local self-government has been neglected, disregarded or violated by a piece of legislation or by a governmental regulation. This has been possible since 2016, thanks to an amendment to Article 25 of the Act governing the Constitutional Court of the Republic of Moldova (Law No. 24). Concretely, this amendment has been in force since 15 April 2016.

The system now allows any individual council of the administrative territorial units of first and second levels, and that of the People’s Assembly of Gagauzia (Gagauz Yeri) to sue in the Constitutional Court on questions of local autonomy, to trigger a control of unconstitutionality by the Constitutional Court. Any such council is entitled to address the Constitutional Court as regards laws and regulations issued by the parliament or by the government even if it is not the only addressee of the legal measure in question. For this reason the legal amendment referred to above deserves a very positive assessment, especially considering that in most European countries single local entities are barred from this possibility.
This does not mean that prior to 2016 the Constitutional Court could not adjudicate proceedings where a violation of the principle local autonomy was at stake. In reality, the Constitutional Court has issued a handful of rulings in this manner, because individual members of parliament or parliamentary groups have always been allowed to file appeals in the Constitutional Court, a possibility that some have used to challenge pieces of legislation. The paradox is that, since the 2016 amendment, no local authority has yet used the possibility of suing in the Constitutional Court. That is, since 2016, the local authorities have filed no appeals in the Constitutional Court, and at the time of the monitoring visit no cases triggered by a local authority council were pending in the Constitutional Court. Therefore, all the case law of the Constitutional Court on local autonomy corresponds to claims triggered by plaintiffs other than local authorities, namely members of parliament. In some cases these rulings were rendered in the context of questions of unconstitutionality.

In the cases that were brought to the Constitutional Court, the main contention was not that the Charter had been violated, but that Article 109 or 112 of the constitution had been breached (or Article 111 if the controversy concerned the ATU of Gagauzia). It is considered that the Charter cannot be violated independently from the principle of local autonomy that is embodied in those constitutional provisions. This is connected with the issue of the value of the Charter in the Moldovan legal order, a question that was addressed at point 3.3, above. The Charter is an international treaty that has been ratified by Moldova and is an integral part of the domestic legal system. Under domestic constitutional law, the direct and invocable supremacy of international law over national legislation is only recognised in the field of human rights: for instance, in a case of contradiction, international conventions such as the European Convention on Human Rights should prevail. Thus, international treaties per se do not have supremacy over the Moldovan Constitution. International treaties have an infra-constitutional nature, but also supra-legal authority.

Thus, the Constitutional Court can check whether the laws and regulations governing local authorities contravene the constitution and the principle of local autonomy enshrined in it (and in the Charter, by extension), and in connection with Article 8 of the constitution, which governs the observance of international treaties. Thus the Constitutional Court has issued a number of rulings were the principle of local autonomy or that of decentralisation were at stake. The case law is not very abundant and the issues of local autonomy have been mainly included in the obiter dicta, rather than in the ratio decidendi of the rulings. With these limitations, it is worthwhile to mention the following cases and rulings:

Ruling 19/2013 on incompatibilities of local elected officials, and 36/1998 on local autonomy: in these decisions the Constitutional Court declared that local public administration plays an important role for the development of administrative territorial units and in ensuring the workflow of public services. Consequently, they are to be seen as a basis of the constitutional system and they are safeguarded as such;

Ruling 99/2004: the Constitutional Court elaborated on the particular features of administrative decentralisation;

Ruling 2/2014, on budgetary autonomy (amount of local taxes);

Rulings 36/1998, 13/2002, in which the Constitutional Court elaborates on the meaning and content of local autonomy, and the need to protect it;

Ruling 89/2017, in which the Constitutional Court analyses one of the most controversial aspects of the current landscape of Moldovan local democracy, namely the possibility for a court to suspend a mayor who is the object of a criminal investigation open by the prosecutor (dossar penale). The
Constitutional Court analysed the constitutionality of this suspension, carefully examined the law concerning the suspension, and concluded that the suspension of a mayor who is subject to a criminal investigation does not violate the constitution because it is a proportionate, justified measure, which is not of a punitive character but a preventive one;

Ruling JCCM M 13/2002 on the constitutionality of local referendums to recall a mayor. The court held that, given that under the constitution the mayor is elected by the citizens, it is for them (the local community), who are the competent subjects, by law, to decide the revocation of the mayor.

In the light of the precedent, the rapporteurs consider that the requirements of Article 11 of the Charter are met in the Republic of Moldova.

**Article 12.3**

**Undertakings**

*Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.*

**Article 12.2**

**Undertakings**

*Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.*

**Article 12.1**

**Undertakings**

*Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:*

- *Article 2,*
- Article 3, paragraphs 1 and 2,
- Article 4, paragraphs 1, 2 and 4,
- Article 5,
- Article 7, paragraph 1,
- Article 8, paragraph 2,
- Article 9, paragraphs 1, 2 and 3,
- Article 10, paragraph 1,
- Article 11.

**Article 13**

**Authorities to which the Charter applies**

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

**Article 14**

**Provision of information**

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

**Article 15.3**

**Signature, ratification and entry into force**
In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 15.2
Signature, ratification and entry into force

This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.

Article 15.1
Signature, ratification and entry into force

This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 16.1
Territorial clause

Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.

Article 16.2
Territorial clause

Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the
expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

Article 16.3
Territorial clause

Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17.1
Denunciation

Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.

Article 17.2
Denunciation

Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

Article 18
Notifications
The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

a any signature;

b the deposit of any instrument of ratification, acceptance or approval;

c any date of entry into force of this Charter in accordance with Article 15;

d any notification received in application of the provisions of Article 12, paragraphs 2 and 3;

e any notification received in application of the provisions of Article 13;

f any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.