

## Monitoring Committee

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## Local and regional democracy in Finland

Rapporteurs:<sup>1</sup> Mr Artur TORRES PEREIRA (L, EPP/CCE)  
Mr Karim VAN OVERMEIRE (R, NR)

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*Document submitted to the Monitoring Committee for approval at its meeting on 16 February 2017*

1 L: Chamber of Local Authorities / R: Chamber of Regions  
EPP/CCE: European People's Party Group in the Congress  
SOC: Socialist Group  
ILDG: Independent Liberal and Democratic Group  
ECR: European Conservatives and Reformists Group  
NR: Members not belonging to a political group of the Congress

## PRELIMINARY DRAFT RECOMMENDATION

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

a. Article 2, paragraph 1.b, of Statutory Resolution (2015)9 relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of Statutory Resolution (2015)9 relating to the Congress, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Recommendation 66 (1999) on regional democracy in Finland;

d. Recommendation 311 (2011) on local and regional democracy in Finland;

e. Resolution 307 (2010) REV2 on procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government;

f. Congress Resolution 299 (2010), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy [MCL-16(2009)11], in its monitoring activities, and the reply by the Committee of Ministers to Congress Recommendation 282 (2010) [CM/Cong(2011)Rec282 final], which encourages the governments of member states to take account of the above Reference Framework in connection with their policies and reforms;

g. the explanatory memorandum on local and regional democracy in Finland drawn up by Artur Torres Pereira (Portugal, L, EPP/CCE) and Karim Van Overmeire (Belgium, R, NI-NR), rapporteurs, following an official visit to the country from 17 May to 19 May 2016.

2. The Congress notes that:

a. the Republic of Finland acceded to the Council of Europe on 5 May 1989 and signed the European Charter of Local Self-Government (CETS No. 122, hereinafter “the Charter”) on 14 June 1990 before ratifying it without reservations on 3<sup>rd</sup> June 1991. Since the entry into force of the Charter in respect of that country on 1<sup>st</sup> October 1991, Finland is bound by the Convention in its entirety;

b. Finland ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No. 106) on 11 September 1990. The Outline Convention entered into force on 12 December 1990 in respect of Finland. The country ratified the Convention on the Participation of Foreigners in Public Life at Local Level on 12 January 2001 and the Convention entered consequently into force on 1<sup>st</sup> May 2001. On 1<sup>st</sup> February 2012, Finland has also ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority. The Additional Protocol came into force in respect of that country on 1<sup>st</sup> June 2012;

c. the situation of local and regional democracy in Finland has already been the focus of Recommendation 311 (2011) adopted by the Congress on 18 October 2011;

d. the Monitoring Committee decided to review the situation with regard to local and regional self-government in Finland in the light of the Charter. It tasked Mr Artur Torres Pereira (Portugal, L, EPP/CCE) and Mr Karim Van Overmeire (Belgium, R, NI-NR), the respective rapporteurs on Finland, with drawing up a report on local and regional democracy in that country and submitting it to the Congress<sup>2</sup>;

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<sup>2</sup> The rapporteurs were assisted by Pr. Nicolaos-Komninos CHLEPAS, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat.

e. the monitoring visit took place from 17 to 19 May 2016. The Congress delegation met representatives of the associations of local and regional democracy in the country, mayors and municipal councillors, regional representatives, representatives of the government, ministries and other central institutions of Finland. The detailed programme of the visit is appended hereto;

f. the delegation wishes to thank the Permanent Representation of Finland to the Council of Europe and the secretariat of the Finnish delegation to the Congress, who assisted with the organisation and smooth running of the visit. They also express their gratitude to all the interlocutors met during the visit for their excellent welcome, their availability and valuable information they provided.

3. The Congress notes with satisfaction:

a. the overall positive situation of local and regional democracy in the Republic of Finland;

b. the culture of consultation and close cooperation between central and local authorities as a good practice among the member states of the Council of Europe;

c. the apparent initiative taken by the Finnish authorities to foster decentralization through the creation of a second tier of local government at regional level;

d. efforts to modernize the equalization system as well as new rules and procedures introduced in order to help municipalities to balance their finance and avoid excessive indebtedness;

e. the strengthening of the role of the Parliamentary Ombudsman at local level, particularly through the use of new technologies;

f. Finland's ratification on 1<sup>st</sup> February 2012 of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), which shows an inclination for local democracy.

4. The Congress notes that the following points call for particular attention:

a. the weak legal status of the Charter in the domestic legal system of Finland and, particularly, the absence of direct applicability of its dispositions;

b. the lack of corresponding financial resources to additional tasks transferred to municipalities;

c. the fact that the nature of the regional entities that will be created on 1<sup>st</sup> January 2017, is still unclear, in the context of the ongoing reform of regional government, as well as on the application of the Charter to these future regions;

d. the weakness of the constitutional basis for a new tier of local self-government at regional level, especially concerning the right to levy taxes and own resources of the new autonomous regions as well as the potential absence of available resources of sufficiently diversified and buoyant nature;

e. the absence of exceptions to the transfer of competences such as tasks related to social and healthcare services to the regional level provided for large cities, according to the subsidiarity principle;

f. the lack of special status for the city of Helsinki and its metropolitan area as regards its specificities as capital city.

5. In the light of the foregoing, the Congress recommends that the Committee of Ministers call on the Finnish authorities to:

a. ensure the direct applicability of the European Charter of Local Self-government within the domestic legal system and in particular, that the Charter be given due consideration in court proceedings;

b. ensure that municipalities are provided with commensurate financial resources in order to enable them to perform their competences in a proper way;

*c.* opt, in the framework of the regional government reform, for the creation of genuine self-governed regions to which the Charter will apply and provide the clear legal and, if necessary, constitutional basis for new self-governed regions, including their right to levy taxes;

*d.* give to new regional authorities freedom of action with regard to their own resources and the use of future state grants;

*e.* provide exceptions to the ongoing transfer of competences to the regional level as to allow largest cities to keep the tasks related to social welfare they are the most capable of coping with, based on the principle of subsidiarity;

*f.* grant Helsinki and its metropolitan area a special status, in order to ensure a more efficient and expedient decision-making system on the general problems and policies affecting the city as a whole.

6. The Congress calls on the Committee of Ministers to take account of this recommendation on local and regional democracy in Finland and the accompanying explanatory memorandum in its activities relating to this member state.

## DRAFT EXPLANATORY MEMORANDUM

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

1. In accordance with Article 2 of Statutory Resolution (2015)9 of the Committee of Ministers of the Council of Europe, the Congress of Local and Regional Authorities (hereinafter "the Congress") prepares regular reports on the situation of local and/or regional democracy in all member states of the Council of Europe.

2. Finland joined the Council of Europe on 5 May 1989 and signed the European Charter of Local Self-Government (CETS No. 122, hereinafter "the Charter") on 14 June 1990 before ratifying it without reservations on 3 June 1991. Since the entry into force of the Charter in respect of that country, on 1 October 1991, Finland has been bound by the treaty in its entirety.

3. Finland acceded to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No. 106) on 11 September 1990. The Outline Convention entered into force in respect of Finland on 12 December 1990. The country ratified the Convention on the Participation of Foreigners in Public Life at Local Level on 12 January 2001 and the Convention entered into force on 1 May 2001. On 1 February 2012, Finland ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority. The Additional Protocol came into force in respect of Finland on 1 June 2012.

4. The situation of local and regional democracy in Finland was already the focus of Recommendation 311 (2011), adopted by the Congress on 18 October 2011.

5. The monitoring visit to review the state of local and regional democracy in Finland took place from 17 to 19 May 2016. The Monitoring Committee appointed Mr Artur TORRES PEREIRA (Portugal, L, EPP/CCE) and Mr Karim VAN OVERMEIRE (Belgium, R, NI-NR) as co-rapporteurs on local and regional democracy. The rapporteurs were assisted by Professor Nicolaos-Komninos CHLEPAS, member of the Group of Independent Experts on the European Charter of Local Self-Government, and by the Congress Secretariat.

6. During this visit, the Congress delegation met representatives of the associations of local and regional democracy in the country, mayors and municipal councillors, regional representatives and representatives of the government, ministries and other central institutions of Finland. The detailed programme of the visit is appended to the present report.

7. The co-rapporteurs would like to thank the Permanent Representation of Finland to the Council of Europe and the secretariat of the Finnish delegation to the Congress, who assisted with the organisation and smooth running of the visit. They would also like to express their gratitude to all those they met during the visit for their outstanding welcome, their availability and the valuable information they provided.

## 2. HISTORICAL BACKGROUND, POLITICAL SITUATION AND REFORMS

### 2.1. *Historical background*

8. Finland gained independence in 1917, following a very long period of foreign rule that included seven centuries as part of Sweden and one century as part of the Russian Empire. As it had been an integral part of Sweden since the 12th century, Finland was already marked by Swedish traditions in law and administration when it was conquered by Russia in 1809. Finland became an autonomous grand duchy, with the Tsar of Russia as Grand Duke governing under Swedish constitutional laws.

9. The 19th century saw the rise of Finnish national identity. Modern local government goes back to 1865 and 1873, when the first municipal statutes were enacted. Cities and rural municipalities were administered differently under separate municipal laws. Prior to 1865, the parish council of the Lutheran Church administered matters related to social care and education. The Rural Government Act of 1865 broke with this tradition. The parish lost its jurisdiction in anything other than purely church affairs.

10. In 1906 Russia introduced constitutional reforms which also covered Finland, under which a new Parliamentary Act was issued and the Diet of Four Estates (originating from the Swedish era) was

replaced by a unicameral legislative assembly with 200 members, the Eduskunta. In response to increasing Russian influence, the parliament was eager to represent all the various ethnic, religious and social groups living in Finland. The proportional electoral system was the only way to enable every major political group to be represented in parliament. The reform was radical for its time, while it also meant that Finnish women became the first in the world to receive both a universal right to vote and eligibility for election without discrimination (in the parliamentary elections of 1907).

11. In 1917, following the Russian Revolution, the parliament approved the declaration of independence drawn up by the Senate, while on 17 July, Finland enacted its first Constitution Act, reflecting a compromise between republican and monarchist ideals. The President of the Republic was given substantial constitutional prerogatives within the system of separation of powers, although the Constitution also underlined the principle of parliamentarianism. The Finnish constitution was divided into four separate acts, which all had a constitutional status; the Constitution Act of 1919 (Finnish: *Suomen hallitusmuoto*), Procedure of Parliament (1922), Finnish: *Valtiopäiväjärjestys*), the Ministerial Responsibility Act (1922), (Finnish: *Ministerivastuulaki*) and the Act on the High Court of Impeachment (1922)(Finnish: *laki valtakunnanoikeudesta*). The fundamental principles of the Constitution remained unchanged for 60 years, as there was little pressure for amendments. Furthermore, one of the features of the Finnish Constitution is flexibility, owing to the use of "exceptive laws": instead of amending the Constitution, an act may be adopted as an *ad hoc* exception to it. Such an exceptive law does not become part of the Constitution and it may be repealed like an ordinary act. This practice, however, has become rare in recent decades.

12. The years before and after independence were characterised by conflicts and deep divisions that had their origin in class conflicts, ideological struggles within the working class between Social Democrats and Communists, tensions between urban and rural areas, and friction between the Finnish-speaking majority and the Swedish-speaking minority. The civil war of 1918 ended in victory for the non-socialist government troops. The wounds of the civil war had far-reaching effects, although they were partly alleviated by conciliatory measures such as including the Social Democrats in government. The consensual culture in Finnish politics gradually emerged after the Second World War, following a long procedure of reconciliation. Until the 1960s, politics was adversarial rather than consensual. Moreover, Finland was subject to strong external pressure from the moment of its independence in 1917 onwards. The country's geo-political position between East and West put severe constraints on Finnish foreign policy in ways that also affected domestic politics.

13. As a consequence of the two wars against the Soviet Union in 1939–40 and 1941–4, Finland underwent a rapid and initially complicated economic and social transition. Having been an agrarian country until the 1930s, Finland experienced a period of rather rapid urbanisation and industrialisation from the early 1950s on. The Finnish welfare state and its administrative institutions had begun to develop in stages already in the 1940s. The development process was similar to that of the other Nordic countries, although it was lagging slightly behind and, for the most part, it took shape in the 1960s and 1970s. Like the other Nordic countries, Finland gradually transferred responsibility for the provision of welfare services from central government to the municipalities. Therefore, Finland is a unitary state with a strong local government, clearly corresponding to the Nordic administrative tradition.

14. The consensual features of the Finnish system gradually increased after the 1960s. The Communists were readmitted to government in 1966 and the Conservatives in 1987, after two decades of exclusion for each of them. Between 1917 and 1983 the average term of a cabinet was little more than one year and strong presidents restored stability. By the end of the 1960s the role of interest groups changed from traditional pressure politics to joint consultation and collaboration, and this was considered to represent a neo-corporatist tendency in Finnish politics. By the end of the 1980s wide government coalitions had become the main expression of consensual politics, while cabinets were already lasting a full four-year parliamentary term.

15. Today, Finland is characterised by a combination of strong central powers, extensive local autonomy and consensual processes of decision-making. As a result, Finland has been labelled a decentralised *unitary state* and primarily a *consensus democracy*. The political system has also been characterised as a *semi-presidential* system, since Finland has been wavering between presidential government and a more parliamentary system. As the presidents, from time to time used their prerogatives to their utmost constitutional limits, the legitimacy of the vast presidential powers decreased until many of these prerogatives were abolished after the constitutional reform of 2000.

16. Since the introduction of proportional representation in 1906 Finland has used the so-called d'Hondt constituency list system with slight modifications. This yields almost full proportionality between the parties but only within each electoral district as there is no nationwide distribution of seats and no electoral threshold (a minimum percentage such as 5% to be represented). Although candidates can be nominated by constituency associations, the main nomination is made by political parties. Seats are allotted to parties in keeping with the number of votes polled. The Finnish electoral system is relatively uniform. Municipal elections follow the same main principles as the parliamentary elections. The President of the Republic is, however, elected every six years by direct majority elections, in two rounds if needed. Political parties are the key players in Finnish politics. Systems of direct democracy are very unusual at national level, although new legislation on citizen initiative was introduced in 2012. Public referendums have only been held on two occasions: in 1931 on the abolition of prohibition and in 1994 on the membership of the European Union.

17. Since independence, four major parties have dominated political life in Finland, although none of them has managed to gain a majority position. Throughout this period, land-owning peasants have been a crucial nation-building force. The peasant-dominated Agrarian League – renamed as the Centre Party in 1965 – and the Social Democratic Party were the two key parties in the changing centre-left coalitions that ruled until the election of 1987, when conservative gains gave the non-socialists their strongest parliamentary position in fifty years.

18. Broad coalitions have been a predominant feature of Finnish politics since the end of the 1980s. The conservative National Coalition Party and the Social Democrats were the two major parties in the coalition government formed in 1987, reflecting the increasing power of the middle class in society. In 1995, in the aftermath of the economic recession, the Social Democrats formed a so-called “rainbow coalition” including the National Coalition Party, the Left Alliance and other key parties. Since 2003 Finland has been ruled by centre-left and centre-right coalitions. In various combinations, smaller parties such as the Swedish People's Party, the Finnish Christian League – later the Christian Democrats – and, after 1987, the Greens have formed part of the coalition governments of recent decades. Three major parties – the Social Democrats, the National Coalition Party, and the Centre Party – used to have electoral support in almost equal proportions.

## **2.2. Political situation and reforms**

19. Since the adoption of Recommendation 311 in October 2011 on Local and Regional Democracy in Finland, several elections have been held. In 2012 the presidential election was held in January and February. The incumbent Tarja Halonen was ineligible for re-election, having served the maximum two terms. All the eight political parties represented in parliament nominated a candidate, but no candidate received a majority of votes in the first round. The winner of the first round was Sauli Niinistö of the National Coalition Party, while Pekka Haavisto of the Green League gained 18.8% of the vote, Paavo Väyrynen of the Centre Party 17.5% and Timo Soini of the True Finns (a party that had been founded in 1995 following the dissolution of the Finnish Rural Party) 9.4%. Sauli Niinistö won the second round with 62.6% of the vote (1.8 million votes) and became President of the Republic of Finland, while Pekka Haavisto gained 37.4% of the vote (1.1 million votes), which was a remarkable success, since it was also the first time that a Green League candidate had been on the runoff ballot. The presidential election of 2012 marked an end to an era of Social Democratic presidents. The Social Democrats had held the office for an uninterrupted period of 30 years.

20. Municipal elections were held in Finland in October 2012. The size of the municipal council or city council depends on the population, starting with 13 members in small municipalities and reaching 75 members in the case of Espoo and even 85 members in the case of Helsinki. Because some municipalities had merged, there were 700 fewer councillors than in the previous municipal election of 2008. Candidates for 9,674 municipal council seats in 304 municipalities had to declare their funding in order to improve transparency. The Supreme Administrative Court had already established important case law on local elections, e.g. concerning the obligations of municipalities in making arrangements for outdoor advertising by political groups before forthcoming political elections (Supreme Administrative Court decisions No. 2012:84, 2006:98, 2005:62). Provisions on holding local elections are laid down in the Election Act (714/1998) and the Act on Local Authority Boundaries (1698/2009). Under section 16, paragraph 1, of the new Local Government Act (410/2015), the number of local councillors must be decided by the local council. The number of local councillors elected must be an odd number based on the population of the municipality, as follows:

Population	Minimum number of local councillors
No more than 5,000	13
5,001-20,000	27
20,001-50,000	43
50,001-100,000	51
100,001-250,000	59
250,001-500,000	67
More than 500,000	79

21. The four-year term of the elected councillors began on 1 January 2013. Compared to the previous municipal elections, there was a decrease in the vote for the three biggest parties: The National Coalition Party reached 21.9% (-1.6%), the Social Democrats 19.6% (-1.7%) and the Centre Party 18.7% (-1.4%). The True Finns Party won 12.3% of the vote, which was an impressive increase (+7%) compared to the municipal election of 2008, but still less than it had achieved in the parliamentary elections of April 2011 (19.1%).

22. In the European elections of 25 May 2014, the National Coalition Party (KOK) came in first place again with 22.6% of the vote, while the Centre Party (KESK) was second (19.7%) and the Finns Party (PS) was third (12.9%). One year later, in April 2015, parliamentary elections were held and the Centre Party came in first place (21.10%, 49 seats), while the National Coalition was second (18.20%, 37 seats), the Finns Party was third in votes (17.65%) but second in seats (38 seats) and the Social Democrats took fourth place (16.51%, 34 seats).

23. As the leader of the largest party, Juha Sipilä of the Centre Party (KESK) was tasked with forming the new government coalition. The ensuing coalition negotiations were successful and led to the formation, on 29 May, of the Sipilä Cabinet, which was supported by a right-leaning majority coalition consisting of the three largest parties – the Centre Party, the Finns Party and the National Coalition Party.

24. The new cabinet has devised a government programme built around five strategic priorities. The strategic objectives are set out in the form of 26 key projects. The Government stated that it wished to implement a social welfare and healthcare reform, reduce the amount of local government tasks and obligations, and reform central and regional government. The corresponding action plan was published in February 2016<sup>3</sup>. It seems that there is a consensus in the Finnish Parliament on the need for local government reform. According to the Chairperson of the Constitutional Committee:

*“All parliamentary groups share the concern regarding present problems, particularly in healthcare, and are willing to solve these problems. The groups agree that the current system is unclear, complex, and economically and operationally inefficient. The Constitutional Law Committee recently unanimously stated that preparation of social and health care reform will have a significant impact on the financing of municipal tasks and duties. When responsibility for social and healthcare services is transferred to larger regional authorities, it is of great importance that financing is sufficient and that an evaluation system is created to monitor the relationship between state and regional authorities. The evaluation should concern at minimum the quality of services, equal access to services and the adequacy of funding.”* As to reforms, a Government term objective has been set: *“The Government will improve the sustainability of public finances with the following structural reforms. The goal is for the implemented solutions to have economic effects totalling at least EUR 4 billion. Before the legislative proposals are submitted and implemented, their impact on the sustainability gap as sought through the reforms will be assessed.”*

Among the five key projects, four were directly concerned with local and/or regional government:

25. **Reform 1: Reform of Social Welfare and Healthcare (SOTE reform):** The goal of this reform is to transfer the responsibility for providing public social welfare and healthcare services from local authorities to larger autonomous regions (SOTE regions). With the removal of this responsibility, the liability of local authorities to pay for social welfare and healthcare services will also be removed. This means that local authorities will not be liable for funding the execution of the reform. The preparation and implementation of the reform are supposed to be paid for out of central government funds. An organisation preparing for implementation of the reform will be set up for the new autonomous regions

<sup>3</sup> Action plan for the implementation of the key projects and reforms defined in the Strategic Government Programme <http://valtioneuvosto.fi/documents/10616/1986338/Action+plan+for+the+implementation+Strategic+Government+Programme+EN.pdf/12f723ba-6f6b-4e6c-a636-4ad4175d7c4e>

to be established (18). Preparations for the transfer of responsibility must include provisions, for instance, for the transfer of personnel, property arrangements, IT system compatibility and the revision of service and other agreements. A complete horizontal and vertical integration of services provided by these autonomous regions will be executed. The aim is to create a streamlined entity out of the service chains that are vital for residents' health and well-being. The reform seeks to narrow well-being and health differentials in the population and bring costs under control.

26. *Regional councils for the SOTE regions* will be elected by direct popular vote. The number of regions and their geographical placement will be determined during the further preparation of the reform so that the number of regions are workable in terms of the successful provision of social welfare and healthcare services and cost control; in this respect, the Finnish Government informed the delegation, it has decided that 18 regions will be created. SOTE regions will have the independent power to decide on how to provide the services for which they are responsible. They may provide services themselves and/or outsource them to private or third-sector service providers. Maximum advantage will be taken of ICT and digitalisation in providing the services. Funding for the autonomous regions will at least initially be provided by the central government. In the second phase of the reform, the current multiple-channel funding system of social welfare and healthcare services will be simplified. The potential for broadening the range of choices available to clients will also be explored. The aim is to improve basic services and to guarantee rapid access to services. The financial viability of service organisers will be strengthened. This will have a significant impact on the sustainability gap in public finances. The reform process will include seven different phases. The draft government proposal that was sent in August 2016 to municipalities and joint municipal authorities for comments up to 7 November 2016, should be submitted to Parliament by the end of the year 2016, while the Social Welfare and Healthcare Implementation Act should enter into force by July 2017. The purpose of the Government's proposal is to establish the new regions from 1 January 2017 and to set out provisions on their governance and finances. Election and transitional administration should take place in 2017–2018. An additional purpose is to transfer responsibility for organising health and social services from the municipalities to the counties on 1 January 2019 as well as to set out provisions on the financing of the counties, tax criteria for collecting financing, the new system of central government transfers to local government for basic public services, the implementation of the reform, the status of employees, and property arrangements. Municipalities' and joint municipal authorities' large and long-term outsourcing projects and major investments in the health and social services sector will be restricted through fixed-term legislation.

27. **Reform 2: Cutting local government costs by removing tasks and obligations.** The goal of this reform is to reduce local government expenditure by €1 billion by the year 2019. The delegation was informed by the Finnish Government that the Ministerial Committee on Economic Policy had decided on an action plan on reducing municipalities' tasks and obligations in February 2016. Obligations of local authorities will be reduced and made more flexible such as for example, conditions of personnel's qualification. Smoother, cross-sectoral operating potential will be created. Service packages will be determined and sectoral obstacles and inflexibilities related to their implementation eliminated. Steering and supervision of municipalities will be developed. Several local government experiments, including a digital municipality experiment, will be launched and fast-tracked. Experiments will be implemented in matters that do not require legislative amendments. Experimentation will be facilitated through permanent legislation in specifically defined domains. The principles of regulatory policy and the steering of local government tasks will be reformed. Local authorities' fee income will be increased, and publicly subsidised passenger transport will be reformed. Indicators for local authorities' production costs will be created. A service-specific information collecting system for local government will be set up.

28. **Reform 3: Municipality of the Future:** The goal is to *define the role and duties of local authorities and the relationship of municipalities to the new autonomous regions* (measure 1). The system of government transfers for basic services will be reformed (measure 2). Changes in the role and status of municipalities in the wake of the SOTE reform and the establishment of autonomous regions will be outlined through parliamentary discussion. A change support programme for local authorities will be elaborated and implemented (2017-2020). With the changes in the role and tasks of local government, the existing system of *central government transfers for basic services* will be revised and updated. A related government proposal for legislation concerning central government transfers for basic services that remain the responsibility of local authorities will be submitted to parliament and co-ordinated with the timetable for the preparation of the establishment of autonomous regions.

29. **Reform 4: Regional Administration Reform:** that is now called “reform of county government” by the Ministry of Finance. The goal is to *co-ordinate the central government’s regional administration and provincial administration*. A separate decision will be taken with a view to *simplifying the arrangement for public regional administration (central government, regions and municipalities)*. The main solution is to *centralise functions in autonomous regions whose tasks and authority are clearly defined*. In addition to social welfare and health care responsibilities, the regions will take over the majority of the tasks of the Centres for Economic Development, Transport and the Environment, the statutory duties of current regional councils (that are statutory joint municipal authorities), the responsibility for organising the duties of Employment and Economic Development Offices and certain tasks from municipalities and Regional State Administrative Agencies. The counties will begin operating on 1 January 2019. A project has been set up to prepare the regional government reform. Six preparatory working groups are responsible for the transfer and reform of tasks in various sectors, the steering and financing system of the counties and the financial arrangements required by the reform, the position of staff and occupational well-being during the process of change, information management and shared information systems of counties, organisation of preparedness and contingency planning duties, and the reform of Regional State Administrative Agencies. The related government proposal will be submitted to parliament in May 2017.

30. According to the Constitutional Law Committee the plan of the previous government was to have 5 health and welfare regions over the 18 regions, of which all the municipalities would be members. However, this would have been unconstitutional, since the possibility for taxpayers to control management of their tax money would have been very remote. The other point was that democratic legitimacy would be too remote, as well. Further to its review of the original plan, the Constitutional Law Committee had proposed two other options to reform social and healthcare services, either in establishing autonomous regions that would take care of these services, or in transferring these tasks under the responsibility of the State. Through the current reform proposal, funding for health care and social services are supposed to be moved to the government. As a matter of fact, there are areas where the population is decreasing and areas where the population is growing. This poses challenges for service funding and provision. It is quite possible that most councillors in the future regions will come from bigger municipalities while smaller municipalities will find it hard to make their voice heard. According to the Chair of the Finance Committee, whom the delegation met, the reform will save €4-5 billion in the long term and this is essential for the Finnish budget.

31. According to contacts the rapporteurs met in the city of Lahti, there is a lack of financial transparency in the existing intermunicipal infrastructure. Specialist health care is provided by intermunicipal bodies, which then charge the municipalities. It is difficult to estimate the costs to be borne by the municipalities. There are also joint municipal primary care facilities. The new regional structure should be more transparent and accountable.

### **2.3. Previous reports and recommendations**

32. Congress Recommendation 311 (2011)<sup>4</sup> in respect of Finland expressed a favourable opinion on the situation of local self-government in that country (points 4.a and b):

*"a. local democracy in Finland is a real cornerstone of democratic life in the country, which is reflected in political practice and enjoys recognition from national institutions and effective protection from the competent courts;*

*b. there is an exemplary culture of consultation and involvement of local authorities by central government in Finland;"*

33. Concerning the lack of a second tier of local government, the report noted that it was:

*"Aware that Finland has a unique system of regional government based on inter-municipal co-operation geared to the country's specific requirements, particularly in relation to its geographical, economic and demographic features".*

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4 The Congress of Local and Regional Authorities of the Council of Europe. Recommendation 311 (2011) Local and regional democracy in Finland. Debated and adopted by the Congress on 18 October 2011, 1st Sitting (see Document CG(21)13, explanatory memorandum), rapporteur: J.L. Testud, France (L, EPP/CD).

34. Nevertheless, the Congress adopted the following recommendations

*“a. to take steps to limit local deficits so as to avoid excessive indebtedness of certain municipalities in keeping with the principle of balanced budgets laid down by law;*

*b. to evaluate, together with the Association of Finnish Local and Regional Authorities, the repercussions for local self-government of the rationalisation of central government’s regional administrative structures;*

*c. to strengthen the role of the Ombudsman at local level by increasing funding so as to optimise the operation of the institution;*

*d. to ensure an equal standard of basic services throughout the country, if necessary by means of additional transfers from central government to municipalities with deficits;*

*e. to ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), as well as Additional Protocols to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159, ETS No. 169 and CETS No. 206).”*

### **3. HONOURING OF OBLIGATIONS AND COMMITMENTS**

35. Finland signed the Council of Europe's European Charter of Local Self-Government of 1985 (ETS No. 122) on 14 June 1990 and ratified the full text on 3 June 1991 without making any declarations. It entered into force in Finland on 1 October 1991.

36. The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority of 2009 (CETS No. 207) was signed by Finland on 16 November 2009 and ratified by a law (1335/2011) that came into force on 1 June 2012. Ratification did not require any changes to the national legislation.

#### **3.1. The Constitution and the basic legislative framework**

37. Today's Finnish Constitution is the result of a major reform conducted in the late nineties. It was considered that the Finnish constitution could no longer be reasonably developed through piecemeal reforms of the separate constitutional laws. The need for clarity and internal consistency, in particular, gave rise to the idea that the system of several constitutional laws should be abandoned and all constitutional provisions should be gathered into a single, integrated Constitution Act. There was also the obvious need to strengthen the role of parliament in the Finnish system of government. The Constitution 2000 Working Group (appointed in 1995 to investigate the need to consolidate and update constitutional legislation)<sup>5</sup> concluded that the most important constitutional law questions to be addressed through the reform were reducing the scope of constitutional regulation, developing relations between the highest organs of government, clarifying questions of power and responsibility in international affairs, constitutional recognition of EU-membership, retroactive supervision of the constitutionality of legislation, the use of exceptive laws and the system to ensure that government ministers could be held legally responsible.

38. The Constitution was divided into two main instruments, the Constitution Act and the Parliament Act. These comprised a regulatory framework for governmental authority and, separately from that, provisions covering the legislature. On the world stage, the Finnish system of four constitutional laws was unique. Finland's current Constitution (Law 731/1999) entered into force on 1 March 2000, and contains an article (Article 131) repealing the Constitutional Law of 17 July 1919 entitled the Finnish Form of Government Act. The Constitutional Law of 1919 was enriched by a section on local self-government, which serves as the basis for current legislation. The Constitution has been amended three times since 2000. There is now a special part of the Constitution (Chapter 11) labelled “Administration and self-government” (Sections 119-126). Most of the important provisions concerning regional and local authorities are included in Section 121 on “Municipal and other regional self-

<sup>5</sup> Jaako Husa (2010), *The Constitution of Finland: A contextual analysis*, Bloomsbury Publishing, London, p. 26.

government". However, relevant provisions can also frequently be found in Section 119, on "State administration", and in Chapter 11, on "Administration and self-government".

39. In addition to the government and the ministries, the central administration may consist of agencies, institutions and other bodies. The State may also have regional and local public authorities. More detailed provisions on the administration subordinate to the Parliament are laid down by an Act.

40. The general principles governing the bodies of state administration are laid down by an Act if their duties involve the exercise of public powers. The principles governing the regional and local authorities of the State are also governed by an Act. In other respects, provisions on the entities of state administration may be laid down by a decree.

41. Section 120 defines the special status of the Åland Islands. The Åland Islands have a right to self-government in accordance with what is specifically stipulated in the Act on the Autonomy of the Åland Islands.

42. Section 121 contains provisions on municipal and other regional self-government. Finland is divided into municipalities, whose administration is based on the self-government of their residents. Provisions on the general principles governing municipal administration and the duties of the municipalities are laid down by an Act.

43. The municipalities have the right to levy municipal tax. Provisions on the general principles governing tax liability and the grounds for the tax as well as on the legal remedies available to the persons or entities liable to taxation are laid down by an Act.

44. Provisions on self-government in administrative areas larger than a municipality are laid down by an Act. In their native region, the Sami have the right to linguistic and cultural self-government, as provided for by an Act.

45. As regards administrative divisions (Section 122), it is stated that the main aim when organising government will be to set up suitable territorial divisions, so that the Finnish-speaking and Swedish-speaking populations are able to receive services in their own language on equal terms. The principles governing municipal divisions are laid down by an Act.

46. As to the delegation of administrative tasks to parties other than the public authorities (section 124), a public administrative task may be delegated to parties other than the public authorities only by an Act or by virtue of an Act if this is necessary for the appropriate performance of the task and if basic rights and liberties, legal remedies and other requirements of good governance are not jeopardised thereby. However, a task involving the significant exercise of public powers can only be delegated to the public authorities.

47. The sections of the Constitution dealing with electoral and participatory rights, especially the provisions introducing voting rights for foreigners, are also of particular importance to local government.

48. Provisions on electoral and participatory rights are found in Section 14, which states as follows: *"Every Finnish citizen who has reached eighteen years of age has the right to vote in national elections and referendums. Specific provisions in this Constitution shall govern the eligibility to stand for office in national elections. Every Finnish citizen and every other citizen of the European Union resident in Finland who has reached eighteen years of age has the right to vote in the European Parliamentary elections, as provided for by an Act [1112/2011, entry into force 1.3.2012]. Every Finnish citizen and every foreigner permanently resident in Finland who has reached eighteen years of age has the right to vote in municipal elections and municipal referendums, as provided for by an Act. Provisions on the right to participate otherwise in municipal government are laid down by an Act. The public authorities shall promote opportunities for individuals to participate in the life of the community and influence the decisions that concern them."*

49. Under its Constitution (Section 17) Finland has two national languages, Finnish and Swedish. Consequently, municipalities can be either monolingual or bilingual. A municipality which is classified as bilingual functions and provides services in both languages. A municipality is bilingual when at least 8 per cent or 3,000 residents speak a minority language as their mother tongue. There are fifty-three

bilingual or Swedish-speaking municipalities, primarily situated in the coastal regions of Finland. The sixteen municipalities of the Åland islands are unilingually Swedish-speaking.

50. There is no Constitutional Court in Finland, although this has been a subject of discussion for many years. There is a mechanism to scrutinise draft laws prior to their adoption – the Constitutional Law Committee of the Parliament (a committee of politicians which to an extent operates in the same way as a court but also holds hearings with university professors and legal advisors). The Constitutional Law Committee analyses draft bills when it is asked to so by the Plenum, examines their constitutionality as well as their compliance with international human rights instruments and can make suggestions (which are not binding). About 20% of draft laws are submitted to this Constitutional Law Committee. In at least 25% of draft laws, constitutional problems are detected.

51. In ordinary legislation, the most important law concerning local government is the Local Government Act (LGA) (410/2015), which includes 17 Chapters and 147 sections and came into force on 1 May 2015, repealing the former LGA 365/1995. According to Section 147, of the new provisions, the ones in Chapters 4-7, Sections 59, 60(2), 64(4) and Chapters 10, 12 and 16 are to apply from the start of the term of local councils elected in 2017.

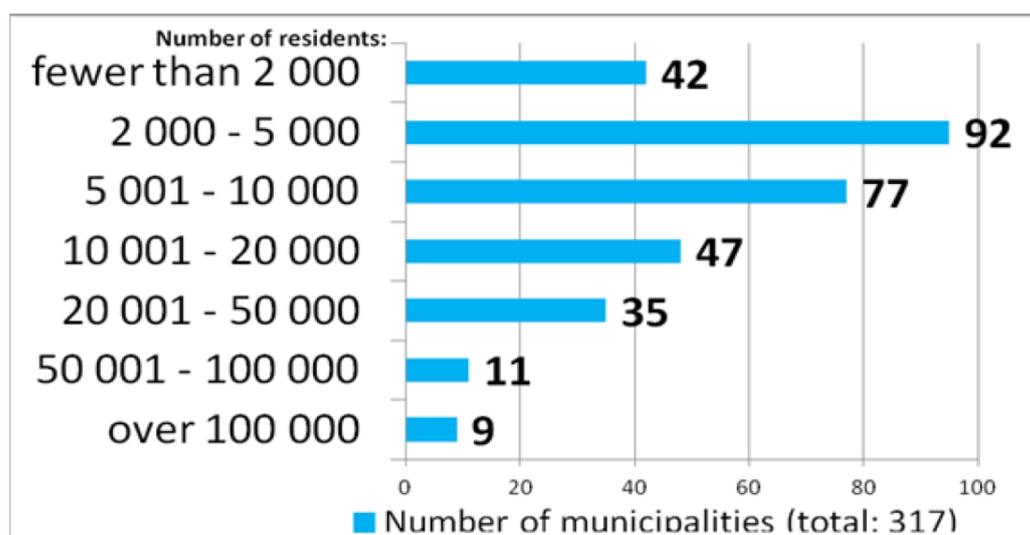
52. The new LGA includes a special Chapter 3 on the relationship between central and local government (some sections on this relationship had been introduced by Amendment 1375/2007 into the previous LGA in Sections 8-8b.). Special attention should be drawn to Section 11 of the new LGA, referring to the negotiation process between state and local government.

53. The negotiation process between central and local government (Section 11) “*shall have regard to the legislation on local government, to central government measures that have far-reaching and important effects in principle on the activities, finances and administration of local government, and to the coordination of central and local government finances, as laid down in sections 12 and 13. In the negotiation process the municipalities shall be represented by the Association of Finnish Local and Regional Authorities*”. It is clear that particular emphasis is placed on consultation and close co-operation between central government and the Association of Finnish Local and Regional Authorities in Finland and this could be considered an example of good practice among the member states of the Council of Europe.

### **3.2. The local government system**

54. Local self-government is guaranteed by the Constitution not only as an institution but also in terms of a right of self-government for the residents of municipalities (Section 121.1). In principle, only the voluntary merger of municipalities is allowed under Finnish law. By way of exception, mandatory mergers are possible in limited cases under Section 18 of the Finnish Municipal Structure Act (1698/2009) and, according to the Association of Finnish Local and Regional Authorities, also under the Act on Local Authority Boundaries. A government decision to force a merger may be appealed to the Supreme Administrative Court. Today, Finnish local government is a one-tier system consisting of municipalities (*kunta*), supplemented by extensive municipal co-operation, primarily by means of joint municipal authorities. The creation of autonomous regions (so-called SOTE-Regions) has been proposed by the Government, but not yet implemented. According to the Finnish Constitution, “*provisions on self-government in administrative areas larger than a municipality are laid down by an Act*”. In 2016, the number of municipalities was 313, following several mergers, but most municipalities still have fewer than 10,001 inhabitants, while 29% have less than 5,001 and 13% even fewer than 2000:

Figure 1: Number of municipalities in Finland by population size, year 2015<sup>6</sup>



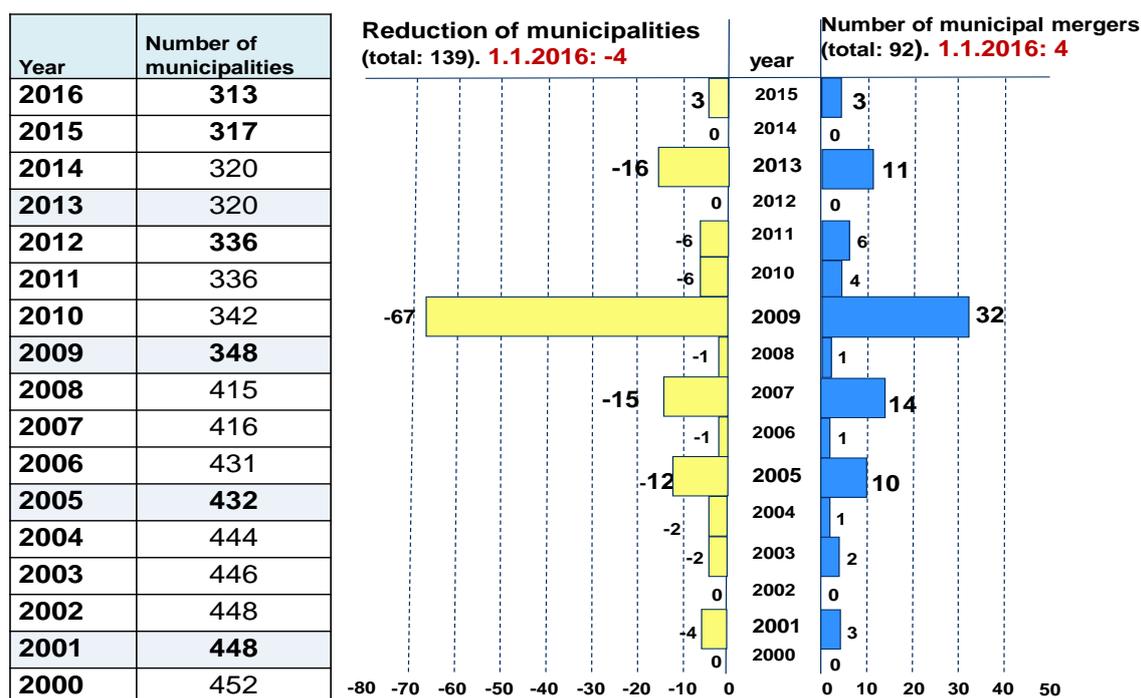
Source: Association of Finnish Local and Regional Authorities (AFLRA)

55. As reported by the Ministry of Finance, the municipal structure is delineated by the borders of the municipalities. Most of the state's administrative authorities, courts of law and electoral districts are also determined by regional boundary divisions. The goal of any changes in municipal boundary divisions is to create a vital, regionally-unified municipal structure with a functioning community structure, which strengthens the municipal residents' capacity for self-government. The aim is for all municipalities to be formed by a commuter area or other functional entity able to finance, organise and provide services for its residents. The new Municipal Structure Act is applied to changes in municipal boundary divisions. It entered into force on 1 July 2013. If municipal councils make a joint proposal to that effect, the Government can decide to merge municipalities.

56. Widespread merger reforms were slow in being implemented in Finland, although quite a large number of individual mergers over time reduced the number of municipalities from 548 in 1960 to 415 in 2008. The government also launched a restructuring project in 2005 (the Project to Restructure Local Government and Services – PARAS), whose aim was to create a system that secured high-quality municipal services into the future. One consequence of the project was that by the end of 2008, the number of municipalities had been reduced to 348 by means of voluntary mergers. Municipal mergers reached their height in the year 2009, with a total of 32 mergers resulting in a reduction of 67 in the number of municipalities. The aforementioned Municipal Structure Act, which entered into force in 2013, did not succeed in accelerating these mergers (see figure below). In total, during the period from 2000 to 2016 there were 92 municipal mergers causing a total reduction in municipalities of 139. Since the beginning of this year (1<sup>st</sup> January 2016) four municipal mergers have been carried out, and the total number of municipalities has been further reduced by four compared to last year (2015):

<sup>6</sup> In 2016 the number of municipalities totals 313.

Figure 2: Municipal mergers in Finland 2000-2016



Source: Association of Local and Regional Authorities (AFLRA)

57. With regard to experiences with mergers and the alternative solution of intermunicipal co-operation, the mayor of the city of Raasepori told the members of the monitoring delegation that small municipalities which are located geographically close to each other were most likely to benefit most from mergers in the long run. Large municipalities should focus on intermunicipal co-operation in order to prevent remoteness from the municipality's inhabitants from growing. A lesson to be drawn from the mergers of 2009 in Raasepori and in the city of Salo was that these processes require time. It is challenging to combine the cultures of three or more municipalities into one. Many merged bodies still focus on the main municipalities and the concerns of their centres instead of looking at the whole. Adjusting the supply of services proved to be a challenging task.

58. As in the other Nordic countries, the Finnish municipalities are responsible for providing local services and welfare services for their residents. However, as the Finnish local government structure is still a one-tier system (or will be until the planned autonomous regions are created, see above), the local authorities are responsible for an exceptionally wide variety of duties. Under the Local Government Act, local authorities may take on non-statutory responsibilities as well as statutory obligations. Their most important statutory functions are social welfare, health care, education, environmental protection, and technical infrastructure. The optional functions falling within the municipalities' general competences relate to recreation, sports, culture and industrial policies. Overall, the most important areas of municipal competence are as follows:

- health care, both secondary and primary, including dental services;
- social services, including social welfare, child day care and services for the elderly and disabled;
- education, including pre-school, primary and secondary education, vocational training, adult education, and library services;
- culture and sport programming;
- land use planning;
- public transport;
- construction and maintenance of local infrastructure and the municipal environment, including streets, energy management, water and wastewater, waste management and harbours;
- promotion of local businesses and employment.

Under the Constitution, municipalities have the right to levy municipal taxes (Section 121.2), but provisions on the general principles governing tax liability and the tax base are laid down by an Act. In 2013 total municipal revenue was €44.8 billion, of which 45% (€20.2 billion) was tax revenue, 19% (€8.3 billion) central government transfers for operational finances, 27% (€12.2 billion) operating revenue, 2% (€1 billion) investment revenue and 6% (€2.7 billion) borrowing.

59. According to data provided by the AFLRA, the performance of Finnish municipalities seems impressive. Municipalities constantly improve their residents' living environments through land use planning and land policy. Local authorities:

- grant about 60,000 – 75,000 building permits every year, while monitoring some 16,000 and processing about 700 environmental permits;
- supply district heating to 2.5 million people;
- manage about 2.5 million tons of municipal solid waste every year;
- provide water services for over 5 million people, supplying high-quality water through a 100,000 km-long water supply network and collecting wastewater via a 50,000 km-long sewer network;
- maintain 260,000 rental dwellings;
- maintain school facilities for 700,000 pupils; they own and maintain over 50,000 public buildings, with a floor area of over 40 million sq. m;
- maintain 28,000 km of roads (used by over 30% of road traffic), 12,000 km of private streets and 13,000 km of separate routes for non-motorised traffic;
- joint municipal rescue departments provide annually about 100,000 rescue and over 300,000 ambulance operations.

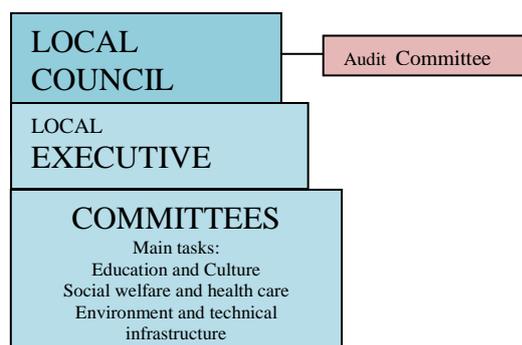
Nevertheless, the most costly services offered by Finnish municipalities are social welfare and health care services, which accounted for 50% of total municipal expenditure in 2013 (€22.8 billion out of a total of €45.3 billion). Education and culture services accounted for 21% (€9.7 billion), while other fields of activities (municipal infrastructure - see list above) accounted for 14% (€6.2 billion) and investment expenditure for 10% (€4.3 billion). Debt service was also substantial, amounting to 4% (€1.9 billion).

60. Apart from the Åland islands, and until the reform introducing the autonomous SOTE Regions in 2017-19 is implemented, Finland still lacks a directly elected form of government at regional level. The Åland Islands are a monolingual Swedish-speaking administrative province and region of Finland which has been autonomous since a decision by the League of Nations in 1921 and demilitarised since 1856. Åland has a population of 29,000, who are mostly Swedish-speaking (more than 90%). Persons who are born on Åland have regional citizenship, which is a prerequisite for voting in local and regional elections and for purchasing land on the archipelago. The Åland Islands are ruled by a directly elected parliament, which has the right to enact its own laws in the areas of regional self-government, particularly health care, education, and culture. Åland has sixteen municipalities with a population ranging from 130 to 11,000 inhabitants. Local self-government is also a regional concern and thus regulated in an Ålandic municipal law.

61. The Finnish municipal system is characterised by a division into political and professional management. The local authorities can organise municipal government relatively freely. Each municipality must have a municipal council, which is the main decision-making body, a municipal executive board, an auditing committee for auditing municipal administration and finances, and an election committee, which is responsible for organising elections. Other committees are optional. Most municipalities have committees that are responsible for certain services, although the organisation of committees varies greatly between municipalities. The most common types are education committees, social welfare and health committees and planning committees. Members of the municipal committees are selected to reflect the strength of the parties in the council, but the members do not have to be elected councillors. The so-called purchaser-provider model, with committees purchasing services from various providers, has been adopted by several municipalities in Finland. However, during the consultation process, the Finnish Government stressed that some municipalities like Tampere and Espoo are now dismantling this model. The Association of Finnish Local and Regional Authorities is also of the view that the purchaser-provider model is becoming less common in Finland.

62. The municipal board is responsible for preparing matters for the council and putting its decisions into effect. The members of the executive board are appointed by the council. The LGA provides for the existence of councils for the elderly (section 27) and of disability councils (section 28). Both are set up by the local executive, but they can also be shared by two or more municipalities.

Figure 3: The organisation of local authorities



Source: Association of Finnish Local and Regional Authorities (AFLRA)

63. In the most recent municipal election in 2012, about 9,700 elected officials were chosen and voter turnout was 58.3%. The proportion of female councillors has been rising steadily, growing from 10.7% in 1968 to 36.7% in 2008, and then decreasing slightly to 36.2% in 2012. Since 1968 elected officials in most Finnish municipalities have not been part- or full-time politicians, meaning that they perform their tasks in their free time. Full-time and part-time professional politicians who serve as elected officials in municipalities are found only in seven municipalities at the moment: Espoo, Hämeenlinna, Lahti, Oulu, Rovaniemi, Tampere and Turku. They amount to about 20 politicians altogether. Two Finnish municipalities have a mayor as their political leader, namely the city of Tampere and the municipality of Pirkkala. Helsinki is also due to introduce a mayoral system after the municipal elections of April 2017. Of course, the fact that the vast majority of elected officials in Finnish municipalities are not part- or full-time professional politicians means that professional staff and municipal bureaucrats are particularly important and powerful in Finnish local government.

### 3.3. Status of the capital city

64. So far, Helsinki has no special status, although discussions were already ongoing at national level regarding the future status of the city and the metropolitan area during the last monitoring visit in 2010. Executive political leadership is strong, since mayors sit for a 7-year term, while the council is elected for a 4-year term. Furthermore, the capital city has also tried to promote local participation of citizens and launched several pilot projects, including participatory budgeting, electronic interaction and participation tools (such as “tell it on the map”) and evenings and city planning events for residents. Maximum transparency is crucial for large cities like Helsinki and the situation in Finland is quite favourable, since the law stipulates that all municipal records are public (especially statistics) and anyone can request any public document (with very few exceptions).

65. A particularly important role is played by the MAL agreement, which relates to metropolitan policy and co-operation with the State. The MAL agreement is used in the integration of urban infrastructure and the traffic system to create favourable conditions for increasing building plots and housing construction, establishing the prerequisites for the proper functioning of the economy and improving traffic services. The aim of growth agreements is to strengthen the growth and competitiveness of the city’s economy, for example by making it a forerunner in the area of smart and clean solutions.

66. According to the Deputy Mayor of Helsinki, the main issue for all major cities in Finland is urban sprawl, leading to expensive and ineffective land use arrangements. The idea of forming a metropolitan area through municipal mergers has been studied, but rejected by the municipalities of the metropolitan area. The previous Finnish government also rejected in 2015 the idea of a metropolitan level council that could end “*the harmful cherry-picking of peripheral municipalities by enforcing a metropolitan level land use plan*” according to Helsinki authorities. Now the central government is planning for a county-wide form of self-government that is not expected to treat urban issues as a priority.

67. The creation of the new autonomous regions does not seem to take account of the unique situation of the metropolitan area of Helsinki and, in particular, the Municipality of Helsinki, which is financially capable of sustaining social welfare and health care services. Granting special status to

Helsinki in accordance with Recommendation 219 (2007) on the status of capital cities is still not being considered. The Deputy Mayor of Helsinki, Mr Pekka Sauri, presented the rapporteurs with the alternative proposals drawn up and presented in a Memorandum on regional reform and the future role of the capital city region.

68. The so-called *Separate Solution for Helsinki Metropolitan Area* presented by the four municipalities of the capital city region in a memorandum of 7 April 2016 is based on the assumption that there will be 18 autonomous regions (counties) and a metropolitan area provided for by special legislation. The metropolitan area will be made up of these four municipalities (Helsinki, Espoo, Vantaa and Kauniainen). The special solution is based on the current special legislation for the metropolitan area and a different approach from the rest of the country to implementing the social welfare and health care reform and the local government reform, since large cities are strong enough players in terms of know-how and resources to be able to manage their ongoing tasks. In this respect, during the consultation process the Finnish Government decided in October 2016 that “*a special solution in social and healthcare is not possible. However negotiations concerning a special solution on so-called growth services have started*”.

69. Another assumption of the proposal made by the municipalities of the metropolitan area is that supra-municipal tasks can still be managed through joint decisions by the cities in the context of co-operation. Co-operation in the metropolitan area is currently based on statutory and contractual co-operation between the cities. Decision-making on the Helsinki Region Transport System (HLJ), traffic system planning and the organisation and operation of public transport, together with water and waste management, air quality monitoring and the collection and interpretation of environmental information is regulated through special legislation on co-operation between cities. According to the *Separate Solution*, these tasks are managed by joint municipal authorities (HSL, HSY) established especially for these purposes. Co-operation continues between the metropolitan area and the other municipalities in the Helsinki region under the MAL Agreement (on Land Use, Housing and Traffic) and the HLJ (Helsinki Region Transport System Plan). The cities' resources should be used in the metropolitan area's joint economic development policy and city marketing programme to increase international competitiveness and promote business activities and innovation.

70. Concerning welfare and health reform, the four cities of the capital city region proposed that the bodies responsible for running social welfare and health care services within the metropolitan area should negotiate the financing and organisation of these services with the State. Responsibility for organising and providing more demanding specialised health care should fall within the county's remit. The bodies responsible for running social welfare and health care services within the metropolitan area will have jurisdiction similar to that of autonomous provinces when it comes to organising and providing primary health care services and the closely connected specialised health care and social welfare services in the metropolitan area, while the municipalities in the metropolitan area will have the possibility of providing the service themselves, in co-operation with each other or as services purchased from external service providers. However, the Finnish Government has rejected these proposals as far as social and health care are concerned.

### **3.4. The Government of Åland**

71. Given the special status of the Province of Åland, the central government is obliged to consult the government of Åland on all matters that concern only the Province of Åland or are of particular importance to it. Furthermore, two institutions are particularly crucial to co-operation between Åland and the central Finnish Government: the Governor and the "Åland Delegation". The Governor performs a dual function, representing the Republic in Åland and communicating Åland's interests to the national government. He or she may address the regional parliament but is not entitled to vote. The Åland Delegation comprises five members: the Governor, the Chair of the Delegation, two members appointed by the Government of Finland and two members appointed by the Parliament of Åland. It is mainly in charge of the budget and matters relating to self-government.

72. The autonomy of the Åland Islands is recognised by Articles 75 and 120 of the Constitution, with reference to the Law on the Autonomy of the Åland Islands (the Autonomy Act), the 1993 version of which governs the region's legal status. The Government of Åland does not need the central government's consent to sign agreements or implement joint programmes with regional or local authorities from neighbouring countries. The Åland Islands take part in Nordic co-operation within the framework of the Nordic Council and the Nordic Council of Ministers and are an independent partner

in various EU-programmes, such as the Central Baltic Programme 2014-2020, funded by the European Regional Development Fund (ERDF).

73. Any amendment of the Autonomy Act must follow the same legislative procedure as a constitutional amendment but requires the consent of the Parliament of Åland. The division of powers between Åland and the central authorities of Finland can thus only be changed on a consensual basis. The current Autonomy Act is the third, and entered into force on 1 January 1993. This law transposes a decision of the Council of the League of Nations of June 1921 on the autonomy of Åland. Among the most important provisions of the law are Article 18, on the legislative powers of the Province of Åland, Chapter 5, defining the authority of the central state, and Article 51, concerning special subsidies from the central state.<sup>7</sup>

74. Åland's autonomy includes the right to pass laws in areas relating to the internal affairs of the region and to exercise its own budgetary powers. Åland's legislature, its "parliament", is known as the *Lagtinget*. The *Lagtinget* appoints the regional Åland Government or *Landskapsregeringen* according to parliamentary principles after negotiations among the various political parties.

75. The Åland administration mainly comprises the regional civil service and has six departments. The Government of Åland is responsible for all areas of government in which the Autonomy Act devolves authority to Åland. The regional government and civil service therefore handle tasks which, in other parts of Finland, are handled by the Finnish Government, their ministries and various state authorities. Åland includes 16 municipalities. As local government is a regional concern, the rules relating to municipal self-government are contained in an Ålandic law (the Law on Municipalities in the Åland islands, AFS 1997:73). Supervision over municipalities is handled by civil servants employed by the Government of Åland or by independent regulatory authorities created by it. The municipalities' decision-making power is exercised by the local council, which is elected through general elections for a four-year term. To be able to vote and stand in municipal elections it is necessary to be of age and to possess the right of domicile, or to have been a permanent resident in Åland during the year prior to Election Day.

76. Åland's largest municipality is its only town, Mariehamn (12,000 inhabitants), which is home to over 40% of the Islands' population. Of the other municipalities on the main island, Jomala, Mariehamn's neighbour, is the largest. The smallest municipality in Åland, and all of Finland, is Sottunga (population: 98). Under current legislation, municipalities are responsible for, among other things, child care, primary education, elderly care, social services, libraries and culture. In contrast with the rest of Finland, the municipalities are not responsible for healthcare services since the Province is responsible for that particular area. Basic services are supposed to be equal in all municipalities but may be organised in different ways depending on the municipality. The level of municipal taxes can also differ between the municipalities.

77. The Government of Åland contributes financially to the municipalities through a financial distribution system called the *landskapsandelsystem*, distributing €38 million per year to the 16 municipalities. About half of the total income for the smallest municipalities stems from the *landskapsandelsystem*. Since Åland only collects municipal taxes, there is an economic equalisation mechanism between the Åland Islands and the Finnish State, described in sections 45-47 of the Autonomy Act.

78. The Government of Åland seems to be increasingly concerned about how reforms in Finland will affect the Åland Islands. The Islands' regional economic structure will be especially affected by the new financial development strategy, which implies fundamental changes in the national taxation system, so the matter is currently the subject of negotiations between the Government of Åland and the central Finnish government. Other concerns relate to the position of the Swedish language in the aftermath of the reforms and the possibility for the authorities of Åland to communicate with the Finnish State authorities in Swedish. However, it has been made clear that the establishment of new regions in the rest of Finland will not have any direct impact on Åland, since this region has its own,

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<sup>7</sup> "Article 51 – Special subsidy

The autonomous region of Åland shall be subsidised from State funds in order to:

- 1) prevent or eliminate substantial economic problems that affect Åland in particular;
- 2) cover the costs of any natural disaster, nuclear accident, oil spill or other comparable incident, unless it is warranted for the costs to be borne by the autonomous region of Åland itself. The Government of Åland shall initiate the proceedings for a subsidy within a year of the date on which the costs were incurred. A decision on the matter shall, if possible, be taken within six months of the initiation of the proceedings".

internationally and constitutionally guaranteed autonomous status. Nevertheless, the Government of Åland does not view the current level of autonomy as a *status quo*, since the level of autonomy is constantly changing, which can be seen from the ongoing revision of the Autonomy Act. The latest revision is scheduled to result in a new, modern Autonomy Act by the year 2021. The Government of Åland argues that one of the main features of the revised Autonomy Act should be a modernised, more flexible economic system including a new financial equalisation mechanism.

#### **4. ANALYSIS (ARTICLE BY ARTICLE) OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER**

##### **4.1. Article 2: Foundation of local self-government**

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

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

79. The principle of local government is explicitly recognised in the Finnish Constitution. In Section 121, para. 1, it is provided that “Finland is divided into municipalities, whose administration shall be based on the self-government of their residents”, while para. 2 stipulates that municipalities “*have the right to levy municipal tax*”. Furthermore, Section 14 of the Constitution states that “*every Finnish citizen and every foreigner permanently resident in Finland...has the right to vote*”. The Supreme Administrative Court assumed that the principle of commensurate resources of municipalities (Art. 9 para. 2 of the Charter) has been acknowledged in Finland, although it has not been explicitly enshrined in the Constitution. Extensive rules on the legal status of municipalities are set out in the Local Government Act (410/2015).

80. Concerning regions and/or other higher levels of local or regional self-government, Section 121, para. 3, stipulates that “*provisions on self-government in administrative areas larger than a municipality are laid down by an Act*”, while in Section 14 (“*Electoral and participatory rights*”) there are no provisions concerning regional elections and citizens’ participation at the regional level. The legal status of autonomous regions has not been configured yet in Finland and the necessary measures for the purpose have not been adopted yet, since there is an ongoing regional reform process.

81. With regard to municipalities, Finland complies with Article 2. Legislation on the new autonomous regions is pending as the regional reform has not been completed yet. A constitutional amendment that would bring the constitutional status of the regions up to the level of municipalities would nonetheless seem necessary if the Government decides to create genuine self-governing regions.

##### **4.2. Article 3: Concept of local self-government**

###### **Article 3 – Concept of local self-government**

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

82. According to Section 14 of the Constitution (para. 3): “*Every Finnish citizen and every foreigner permanently resident in Finland who has reached eighteen years of age has the right to vote in municipal elections and municipal referendums, as provided for by an Act. Provisions on the right to participate otherwise in municipal government are laid down by an Act.*” The rules on the right to vote in local elections are laid down in Section 20 of the Local Government Act (410/2015), which also grants electoral rights to non-EU citizens resident in Finland for two years and employees of international organisations operating in Finland. Section 21 of this law lays down the rules on voting rights in municipal referenda and in local referenda concerning a sub-area of a municipality. The

following sections of the law refer to several means of participating and exerting influence in municipal activities (panels, users' boards, independent planning by residents, etc.), together with youth participation, councils for the elderly and disability councils. Finland has also been a forerunner in matters of e-participation, with several cases of pilot implementation. With regard to the responsibility of executive organs towards the municipal assembly, it is worth mentioning that various decision-making authorities such as chairpersons, mayors and their deputies may be removed before the end of their term if they do not enjoy the confidence of the council (Section 34 of the Local Government Act).

83. Extensive provisions on political accountability and citizen participation are not only the product of well-established democratic traditions but also of public concern about democratic standards and respect for democracy. In recent years, much attention has been paid to the state of local democracy in Finland and the challenges it faces. Among the main concerns have been declining electoral turnout and inequality between inhabitants in their chances of participating in and influencing decision-making processes. In municipal elections in particular turnout had already been decreasing since the nineties. These two problems (voter turnout and participatory inequality) were also the main concerns expressed in the government report on democracy policy. In 2014, the government presented parliament with the first government report on democracy policy, and this contained definitions of policy connected with the need to develop democracy and the aims of democracy policy in forthcoming years. These included activities and aims relating to the local level and were taken into account during processes including the reform of the Local Government Act. The implementation of these aims is currently an ongoing process. Many different kinds of activities and aims were established in order to tackle these and other challenges. Activities related, *inter alia*, to government institutions at different levels of government, NGOs and political parties. Various ministries have already started implementing these activities in co-operation with NGOs and local governments.

84. The new Local Government Act (410/2015) highlights and introduces new means through which transparency, responsiveness and accountability can be enhanced. In addition, new means and mechanisms of participation were introduced. Act 410/2015 also aimed to strengthen direct democracy at local level by introducing new sections on means of participation and by underlining residents' participatory rights, along with the local council's duty to ensure that there are diverse and effective opportunities for participation. It includes sections on youth councils, councils for the elderly and disability councils, which will be compulsory bodies at local level from the beginning of the term of the next council.

85. The new Act also highlights citizens' and elected officials' right to information. Municipalities must ensure, for example, that the necessary information about preparatory work concerning matters for consideration by decision-making bodies is distributed via public information networks once the meeting agenda is ready, to satisfy the general need for information. In their online communications, municipalities must ensure that information that should be kept secret is not released via public information networks and that personal privacy is protected when personal data is handled. Elected officials have the right to obtain information from municipal authorities where they consider this information to be essential for their work and it has not yet entered the public domain under sections 6 and 7 of the Local Government Act.

86. One interesting example is Raasepori, where the municipality uses the *kuntalaisaloite.fi* national e-service provided by the Finnish Ministry of Justice, enabling the inhabitants to contact the authorities electronically and follow up their enquiries via the municipality's website. The municipality is also very active on social media (Facebook, Twitter, Instagram and Pinterest), which function partly as interactive question and answer channels but also as platforms for spreading information quickly and as marketing tools. The town encourages its employees at the sectoral level to stay in touch with the inhabitants through social media.

87. With regard to constitutional foundation (Art. 2 ECLSG) and the concept of local government (Art. 3 ECLSG), the Chairperson of the Constitutional Law Committee pointed out during the meeting with the rapporteurs that Section 121 of the Constitution also refers to regional authorities larger than one municipality, but only in one sentence (see above under Art. 2 ECLSG). The government is preparing new legislation which will transfer a significant part of municipalities' decision-making power to larger authorities, which will have directly, openly elected councils, fairly wide jurisdiction and, perhaps in the future, even the right to collect tax from their residents. Therefore, it may be appropriate to consider an amendment to the Constitution, which would describe the duties and powers of the new autonomous regions. Some other parliamentarians also stressed the need to amend the Constitution

to give powers to levy taxes to the new tier of local self-government (in accordance also with Art. 4 of the Charter, see below). However, during the consultation process, the Deputy Parliamentary Ombudsman shared with the delegation her view that the interpretation of the relevant Section 121 of the Constitution is not yet established. Therefore, according to the Deputy Ombudsman, it might be too early to analyse the need for possible amendment at this stage. Nonetheless, the rapporteurs consider that it should be preferable to tangibly guarantee the taxation right for the regional level. A constitutional amendment should foster this protection as the wording of Section 121 only purports to provide the municipalities' taxation right.

88. The transfer of responsibility for social welfare and health care to the new regional tier will mean that 60% of municipal duties will be transferred to the regions, according to an Orimattila town councillor. The new regional entities will be subject to state control as there will be growing administrative supervision by central government and the financial resources of the new regional authorities will consist of block state grants. In this respect, the rapporteurs express their concerns that these grants are currently designed to fund only a limited number of competences. They consider that, if the future autonomous regions do not have enough diversified competences, these grants might be considered to be earmarked in practice. Furthermore, the SD (Social-Democrat) parliamentary group stressed that the impact of the reform could vary from one region to another. The smallest autonomous region will have a population of about 70,000 while the largest will have no fewer than 1,600,000 inhabitants. On the whole, the reform may lead to stronger central government and weaker local decision-making. In a small autonomous region the risk of overconcentration at regional level would be relatively small but in the larger regions this danger would be considerably more pronounced.

89. Concerning the negative effects of regionalisation on municipalities, the delegation was told by a member of the Parliament who supports the government plans, that the reform would clearly reduce the municipalities' duties and importance. In the future, the municipalities would be acting more as local participatory communities, so there was of course, "*a risk of overconcentration at regional level*".

90. On the other hand, as the same person pointed out, some smaller municipalities today are in a financially restricted situation and their budgets are not balanced. This again has led to a situation where many services and municipal duties are taken care of by federations of municipalities. These federations are financed by municipalities, but their decision-making bodies are not chosen by open elections and therefore residents do not have a direct possibility to influence decision-making. Some argued that the present situation, with federations of municipalities governing local affairs, was "undemocratic".

91. Currently, Finland has a two-tier governance structure including local and national levels. The local level (municipalities) forms the basis of local democracy while parliament ensures that central government is democratic. The regional level lacks any proper representative democracy. Despite the weakness of regional democracy, the regional level plays an important role in health care and regional development. Reforms to health care, social welfare and regional government will introduce representative democracy at the regional level throughout the country (with councils elected via direct elections). Many of the tasks currently arranged by municipalities will be exercised by the regions in the future. In addition, many of the tasks of state regional authorities will be given over to the future self-governed regions. These functions that are related to regional development have not yet been within the range of regional or local democracy. In this sense, local and regional democracy will widen with the reform.

92. The division of powers between the local/regional level and central government will change drastically because central government will delegate considerable economic power over regional development to the new counties. There will be a new balance, in which the local and regional levels might move closer to each other and co-operate in many tasks. Some government officials claim that eventually the authority of municipalities will be strengthened as central government will have less power in local affairs than it has now in practice. However, during the consultation process, the Association of Finnish Local and Regional Authorities expressed its doubt *the perception that the reform will strengthen municipal self-government and decrease central government power over local affairs* and it *leaves room for interpretation*. Another governmental argument is that even though many tasks will be transferred from the municipalities to the regions, there will not be such a drastic change in the level at which tasks are taken care of. This is because tasks are already organised by joint municipal authorities at supra-local level.

93. The municipalities will still have important service functions in the future. They will also have a role as communities for local participation, democracy, culture and development, retain a general mandate to manage the duties related to municipal self-government as decided by the residents and perform local duties defined by law. In accordance with current statutory principles, municipalities will still be responsible for managing and promoting employment. They will also continue to be responsible for the following tasks: promoting participation and culture, promoting health and well-being, services related to sports, culture and other leisure activities, youth services, local industrial policy, land use, construction and urban planning. However, there will certainly be a shift in the role of municipalities. Regions will have tasks which they can hand over to municipalities by agreement. A very significant sector in which regions will be able to delegate authority to municipalities is labour policy. This will strengthen municipalities' role in managing and promoting employment. In general, regions and municipalities will need to co-operate.

94. Some of the Finnish experts warned against attaching too much value to the fact that municipalities are currently responsible for social welfare and health care. It is quite common for people to see themselves as consumers of municipal services rather than as municipal citizens. Therefore most people do not really care who is in charge of these services; they care most about their cost, availability and efficiency. Municipalities' big budgets and large staffs may even restrict their true political discretion since they are under extreme pressure to manage important and costly social services. Furthermore, municipal services are now managed by professionals and the principle according to which "municipalities should be run by elected politicians" has been receding, meaning that in practice, municipal politicians are often obliged simply to follow priorities set by their municipality's professional managers. According to an Orimattila town councillor, the question arising is to "*whether the Mayor, as well as the chairpersons of the executive committees in other municipalities should be directly elected, as the Congress recommended in 2002, despite the fact the new Local Government Act (410/2015) does not allow this*". In respect of this debate, the Government informed the delegation that an extensive study has recently shown that only a few municipalities in Finland would like a mayor elected through direct elections. No decision has been taken yet concerning the modification of the Local Government Act in the framework of the SOTE-reform to allow directly elected mayors. The new regions may probably simply mean that services will be rationalised, since municipal service provision is very expensive (lack of economies of scale). Therefore it is only efficiency that is being debated, not political or democratic considerations. Regions will pool various services (thus also creating economies of scale), which mainly used to lie in the hands of various regional municipalities associations and, in some cases, single municipalities, and align them under one leadership. However, these are rather routine tasks and regions therefore should also become major decision-makers on economic and cultural development activities. One should never underestimate the risk of bureaucratisation in local government, which should primarily serve as a political institution providing participatory possibilities and democratic legitimacy, not simply just another public service provider.

95. The rapporteurs conclude that Finland formally complies with Article 3, para. 1, of the Charter as the municipalities do regulate and manage a substantial share of public affairs. At the same time, however, they wish to express their concern about extensive state regulation of municipal affairs, especially in the wider area of social services, which the Government also acknowledged. With regard to paragraph 2 of Article 3 there are two points of concern: First, the fact that various municipal associations fulfil important municipal tasks (especially in the fields of welfare and healthcare) seems to undermine accountability to municipal councils in many cases, while there were also complaints about rising costs for municipalities who "simply pay the bill". Secondly, the wide range of highly demanding services and activities seems to have caused a shift of power towards the professional managers of municipal and intermunicipal authorities. A process of "bureaucratisation" in local government has placed key decision-making processes in the hands of professionals and technocrats whereas elected politicians have been losing control over important policy fields. Therefore, new monitoring instruments and procedures are needed to restore the accountability of professional executives to the elected councils in accordance with Article 3, para. 2, of the Charter. To sum up, the rapporteurs conclude that Finland partially complies with Article 3, para. 2, of the Charter.

#### 4.2. Article 4: Scope of local self-government

##### Article 4 – Scope of local self-government

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

96. Local governments in Finland are featured with their vast sphere of activities and their place at the heart of the activities of administrative institutions working directly for public well-being. With regard to the exercise of local government responsibilities (para. 2 and 3 of Art. 4 ECLSG), during the visit to Raasepori, the Mayor pointed out that in the field of social services, the town delivers all services independently except for the assistance component of its disability services, which functions as a mixed service. When it comes to services governed by the Social Welfare Act, the town delivers most services independently apart from high-intensity sheltered housing, for which the municipality makes use of services supplied by other organisations or providers. Most social services are local authority tasks, which mean that both the powers and the responsibility lie with the municipality.

97. The members of the Constitutional Law Committee said that the Left Alliance Party and the Social Democratic Party have concerns regarding the government's plan to open up public social and health care even further to competition, making it possible for multinational companies to provide services in these sectors. The Left Alliance parliamentary group has outlined its views in a statement. The starting point for social and health care reform should be to strengthen primary healthcare. The transition from primary care to specialist care should be smooth, as should be the movement between social and health services. The Left Alliance Group does not accept the government's argument that all public social and health services should be organised as private companies as it believes that this would make healthcare unnecessarily open to competition. Social and health services should instead be provided mainly by the public sector.

98. Although it is still not clear what the specific choices will be for the legal framework of the future self-governed regions, there is some evidence that these regions will not have a general competence like municipalities do (Article 4 para. 2 ECLSG). A special Finance Act for the regions will be drawn up. According to governmental project, the new regional entities will be able to organise their own services and choose how to provide them (e.g. also through outsourcing and contracting) but they will not have their own tax revenue (Article 9, paras. 1 and 3). At the Ministry of Finance it was made clear that financial considerations are probably the most important drivers of the reform: Costs for social welfare and health care would increase by 2.4% per year. If 300 municipalities in Finland retained the corresponding responsibilities, these costs would soon rise further, in line with population growth, by 6-7% every year, and the Finnish government would not be able to control the increase.

99. Concerning the right to be consulted (Article 4, para. 6, Article 5 and Article 9, para. 6, ECLSG), the Chairperson of the Constitutional Law Committee pointed out that, under the Parliament's Rules of Procedure, committees handling government proposals and bills may hear experts' opinions. This usually means that organisations, bodies or institutions that will be affected by the bill are heard by the committee. It would be considered extremely odd if a committee did not hear the municipalities and the AFLRA for example when a bill related to self-government or local democracy. The Constitutional

Law Committee would also make a statement on any government proposal affecting municipalities as section Section 121 of the Constitution contains strong guarantees in their respect.

100. Furthermore, central government and the local authorities maintain close ties with each other in Finland. Up to 75% of parliamentarians are members of municipal councils as well. In some respects, this reflects the fact that municipal democracy and all its aspects are taken into consideration in practice when central government takes decisions on reforms influencing local democracy. The ongoing reform is being prepared in several working groups, which comprise members representing regional and local authorities. There is also widespread discussion about the reform outside these working groups and the regional and local authorities are actively involved in this. Discussion has influenced and will continue to influence the proposals that government has been distributing for comment. The matter is also being discussed by the Committee on Economic Affairs and twice a week, one of the parliamentary committees or working groups consults AFLRA on the subject. The constitution provides that the municipalities have to be heard.

101. The relevant ministries, namely the Ministry of Finance and the Ministry of Social Affairs and Health, actively inform the general public and stakeholders on the progress of the reforms by various means and through various forums (website, events such as seminars, etc.). Regional and local authorities have already given their official comments on the boundary divisions of the future counties. Consultations on the legislation on health care and social welfare reform and county reform began in August and will end in November 2016. Local and regional authorities are among the largest interest groups which will make comments on the proposed legislation.

102. To sum up, the rapporteurs conclude that Finland complies with Article 4 of the Charter, while noting with satisfaction that particular attention is given to consultation of local authorities in Finland. Opening public welfare and healthcare to competition does not necessarily constitute an infringement of para. 4 of Article 4 provided that the local authorities are outsourcing service provision in order to reduce costs but maintaining control over priorities and the quality of these services. On the other hand, some of the options being considered as part of the planned regional reform raise concerns about compliance with various paragraphs of Article 4.

103. A particular point of concern would be the upward transfer of important municipal responsibilities to the regional level even in cases where very large municipalities are fully capable of dealing with them (e.g. Helsinki or other big cities). Paragraph 3 of Article 4 establishes the subsidiarity principle and such responsibilities should preferably be exercised by those authorities which are closest to the citizen, which is precisely the case in some large cities in Finland. Therefore, the rapporteurs are of the view that the possibility of making exceptions for large cities should be considered where the transfer of these tasks to the regional level does not seem necessary and would infringe the principle of subsidiarity and Article 4, para. 3, of the Charter. Furthermore, following the subsidiarity principle and considering the fact that Finnish municipalities are very different in size and that the range of services actually provided by largest cities is much broader than in small rural municipalities, the rapporteurs consider it justified, given the specific problems that the capital city is facing, that Helsinki be granted a special status.

#### **4.3. Article 5: Protection of local authority boundaries**

##### **Article 5 – Protection of local authority boundaries**

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

104. The former Katainen's government launched a major local government reform in 2011, the aim being to reduce the number of municipalities from 413 to 70. According to an Orimattila town councillor, this reform process failed to take account of the constitutional limitations on local government legislation. The Parliament's Constitutional Law Committee stated (20/2013) that it was impossible to merge municipalities against their will (unless they were unable to perform statutory tasks like providing fundamental welfare services). The Supreme Administrative Court, however, ruled that compulsory merger is possible in the context of a specifically regulated nation-wide structural reform of local governments. In this case, compulsory co-operation between municipalities – and mergers – are possible outcomes (Supreme Administrative Court 2014:195 and 2014:144) (see below). Another acceptable reason for involuntary merger is if a municipality is in a hopeless economic

situation. In exceptional, economically critical circumstances the State may impose strict economic and administrative restrictions on a particular municipality under specific legislation. Such extreme situations may also result in compulsory mergers of municipalities (Supreme Administrative Court 2014:197). Since 1 July 2013, the Finnish legislation provides for the possibility of mandatory mergers in the event that municipalities encountered major economic problems (Section 18 of the Municipal Structure Act).

105. It is also worth mentioning a particular situation<sup>8</sup> of the obligatory change in municipal boundaries in the Helsinki region when south-west part of Sipoo – Oestersundom was transferred in a compulsory manner from the municipality of Sipoo to the municipality of Helsinki by a Cabinet order in 2006 in spite of the reported large opposition of the local population of Sipoo expressed during the local referendum. The aforementioned decision of the Cabinet was contested before the Supreme Administrative Court. In its decision (2008:1), the Supreme Administrative Court referred explicitly to the Charter and specifically to Article 5 of the Charter (as well as Articles 3 and 4). The decision of the Cabinet was upheld.

106. There is still some discussion of the possibility of a reform to the system of obligatory mergers and compulsory changes of local authority boundaries. In the light of the visit that they carried on in May 2016, the rapporteurs conclude that Finland complies in general with Article 5 of the Charter and encourage the Finnish authorities to step forward on this reform.

#### **4.4. Article 6: Appropriate administrative structures and resources**

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

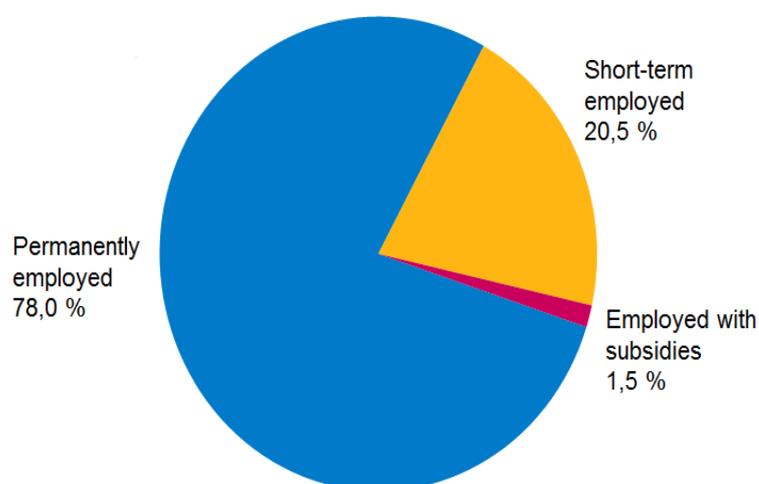
- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to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

107. According to information provided by the AFLRA, about 422 000 persons are employed in the municipal sector (October 2015). The number of municipal staff grew rapidly during the seventies and the eighties, which was a period of expansion in welfare services. The number dropped in the recession years of the early 1990s, but started to rise again in the middle of that decade. It reached its height, however, in 2011, and since then the number of staff has decreased every year. 85% of monthly salaried employees in the municipal sector are employed on full-time contracts. Three-quarters of all employees have permanent jobs and women account for about 80% of municipal staff. While the average age of employees is 45.7 years, that of permanent staff is 47.8 years. According to the persons interviewed by the rapporteurs, municipal employees enjoy good career prospects, especially in larger municipalities which can easily attract highly skilled staff. Therefore, Finland fully complies with para. 1 of Article 6 of the Charter.

<sup>8</sup> The rapporteurs were informed of the contested merging of part of the municipality of Sipoo with the City of Helsinki after the monitoring visit to Finland. The research carried out by the rapporteurs in consultation with experts appears to confirm the relevance of this issue with regard to the respective provision of the Charter in combination with its Article 4 paragraph 6 on timely and appropriate consultation. However, the case of Sipoo was not subject to an in-depth analysis during the monitoring visit, which prevents the rapporteurs from providing a more substantial examination of the situation.

Figure 4: Types of employment in local authorities (2014)

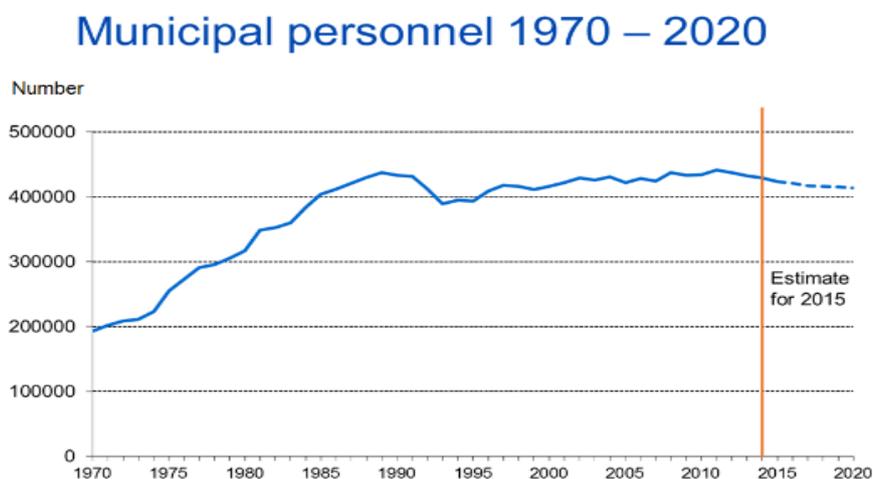
## Local authority staff by type of employment in 2014



Source: Association of Finnish Local and Regional Authorities (AFLRA)

108. Finnish legislation in general and the Local Government Act in particular grant local authorities organisational discretion, which enables them to determine their own internal administrative structures, and it is intended for the situation to be the same in the future autonomous regions. Therefore, Finland fully complies with para. 2 of Article 6 of the Charter.

Figure 5: Municipal Personnel (1970-2020)



Source: Association of Finnish Local and Regional Authorities (AFLRA)

109. It can be concluded that Finland fully complies with Article 6 of the Charter.

#### 4.5. Article 7: Conditions under which responsibilities at local level are exercised

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

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

110. One of the main aims of the new Local Government Act (410/2015) is to promote representative democracy by ensuring good working conditions for elected officials and transparency of decision-making. The Government recognised that *“there have been problems with the overload of work and difficulties to combine private life and position of trust”*. These reasons led to changes to the Local Government Act in 2015 with some changes that will enter into force after the next local government elections in 2017. If a municipality has decided to have full-time or part-time elected officials, under the new act, full-time elected officials are entitled to leave of absence from their jobs for the duration of the full-time position. In the case of any leave of absence that is required to fill a part-time position, the elected official must agree this with his or her employer. The local council decides on the payment and remuneration of elected officials in general and also sets the monthly pay and remuneration of any full-time and part-time elected officials. Full-time and part-time elected officials have the right to annual leave, sick leave and family leave, as well as occupational health care services, on the same basis as local government officers. The provisions of the Employment Accidents Act (608/1948) concerning employers and employees apply in the same way in municipalities to both full-time and part-time elected officials. The law also introduces new management models, such as chairperson or standing committee models, with the aim of strengthening political leadership. According to the Government, the new Local Government Act aims also to clarify the position and distribution of work between the municipal manager, the council and the Executive Board. The Ministry told the delegation that it intends to address the problem of bureaucracy burden through the reduction of municipalities’ tasks. Attention should be drawn, however, to the fact that full-time and part-time elected politicians are rare in Finnish municipalities, a fact that further strengthens the power and influence of professional executives and municipal bureaucracies. Municipalities are also service providers, but the local government concept of the Charter is based upon the political and democratic essence of self-government, which can be frustrated when in practice decisions are already taken by the heads of municipal bureaucracies.

111. Local councils decide on the principles underlying financial benefits for elected officials. Municipalities usually have a fee rule. Meeting fees are paid for almost all meetings attended by elected officials. According to information provided by the AFLRA, the average meeting fee is €70 for the members of the council and the executive and about €100 for the chairperson of the council and the executive. Fees are usually larger in the larger municipalities. For example, meeting fees range from an average of €43 in municipalities with fewer than 2000 inhabitants to €197 in municipalities with more than 100 000 inhabitants. A fee for a fixed period (month or year) is paid to the chairpersons of the municipal council and executive more often than to the members. The average yearly fee is about €2,000 for the chairperson of the council, €2,500 for the chairperson of the executive and €864 for the chairpersons of committees. Provision is made for compensation for loss of earnings and for costs incurred in engaging a substitute, while childcare costs are covered, amounting to an average of €23 per hour, but varying from municipality to municipality between €8 and €64. Electronic meeting systems have become more common in municipalities, so web conference interfaces are often also used for meetings between elected officials.

112. All elected officials’ salaries and compensation are taxable. It is also quite common for political parties to charge elected officials a fee called a party tax, provided that they are authorised to do so, and this may apply to all fees, or just for example to meeting fees. The amount of the party tax is set by the party’s municipal branch, with the result that there can be quite large differences between municipalities and political parties in this respect. Most commonly it is 10% but it can range from 5% to 80% of the fee. Usually, party tax is charged on gross incomes but because of the very high

percentages involved, it has sometimes been charged on net incomes. There can be an upper limit on the amount of party tax that can be charged, such as €90-100 a year. Municipal branches of the political parties can charge different party taxes. On average, the highest tax is charged by the Greens (about 19%) and the lowest by the Swedish Party of Finland (about 12%).

113. With regard to the legal framework, it can be concluded that Finland fully complies with Article 7 of the Charter.

#### **4.6. Article 8: Administrative supervision of local authorities' activities**

##### **Article 8 – Administrative supervision of local authorities' activities**

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

114. Financial supervision is primarily the task of the municipalities themselves, in accordance with the relevant provisions in the Local Government Act. However, there is growing concern about the increasing body of state norms interfering with the details of municipal activities. According to A. Ryyänen, Orimattila town councillor, *“the tendency for some years has been increasing state control of administrative norms”*. Supervision of the legality of municipal activities is mainly exercised by the administrative courts in individual cases. Any municipal resident has standing in cases concerning the exercise of the general competence of the municipality. Appeals against the decisions of a municipal body (often as the result of an application for a revised decision) are made by submitting an appeal against a municipal authority decision to the (Regional) Administrative Court (of municipal appeal). Such an appeal may be made on the grounds that: 1) the decision was not taken in accordance with proper procedure; 2) the body exceeded its powers; or 3) the decision was otherwise unlawful. All natural and legal persons resident in the municipality are entitled to appeal (*actio popularis*), together with any individually affected parties. In most cases Administrative Courts may uphold the decision or repeal it, but not directly amend it. Further appeals may be lodged with the Supreme Administrative Court. Regional level authorities control municipalities formally only through the supervision of legality which is performed by Regional State Administrative Agencies. Economically and functionally, the regional level does not control municipalities in any way. State regional authorities control and allocate state resources in their own area. These are of significance to municipalities as well and the relationship between the two is more like a partnership than a hierarchy. Municipalities have to adjust their policies, like those on infrastructure for example, to state policy, and vice versa. Efforts are made to arrive at decisions through negotiations working towards a mutual understanding or sometimes even a more formal agreement.

115. In exceptionally critical circumstances the State may take a municipality into economic and administrative “guardianship”, under specific legislation. Such extreme situations may also result in the compulsory merger of municipalities (Supreme Administrative Court 2014: 197). In the context of a specifically regulated nation-wide structural reform of local governments and entities, compulsory co-operation between municipalities – and mergers – are possible outcomes (Supreme Administrative Court 2014:195 and 2014:144).

116. Two important institutions in both the human rights and the local government rights fields are the Ombudsman and the Chancellor of Justice. The formal and actual independence of the Chancellor of Justice is guaranteed by his/her constitutional position and long history (since 1809). Municipalities can file complaints with the Chancellor of Justice. The Chancellor of Justice also checks the lawfulness of decisions made by the government and the President of the Republic prior to their implementation. Such decisions may relate to government bills and decrees and may also concern matters connected with municipalities such as decisions on municipal mergers. The Chancellor of Justice receives a considerable number of complaints from citizens concerning municipal administration. Most often they are related to maladministration or social, health care and educational

services. There are no regional or local ombudsmen in Finland and it seems that there is no prospect of establishing such institutions. There are, however, patients' ombudsmen and social ombudsmen with duties which partly resemble one another in their respective fields of operation. In Recommendation 311 (2011) the Congress drew particular attention to the need to increase funding so as to optimise the operation of the institution of Ombudsman and strengthen his/her role at local level.

117. The tasks of the Parliamentary Ombudsman are defined in the Constitution (sections 110 and 111) and in the Parliamentary Ombudsman Act. The Ombudsman has the task of exercising oversight to ensure that authorities and officials observe the law and discharge their duties. In addition to authorities and officials, the scope of the Ombudsman's oversight extends to other parties performing tasks of a public nature. The Ombudsman pays special attention to the implementation of fundamental and human rights. The *Eduskunta*, the parliament of Finland, has also requested that particular attention be paid to the implementation of children's rights. The Ombudsman mainly supervises lawfulness by examining the complaints he/she receives. He/she can also intervene to address perceived shortcomings on his/her own initiative. The Ombudsman also inspects offices and institutions, especially prisons, military garrisons and other closed institutions like hospitals and homes for the elderly.

118. The amount of complaints submitted to the Parliamentary Ombudsman and the Chancellor of Justice varies every year but the statistics show that they have increased considerably in recent years. By contrast, there has been a slight decrease in the number of investigations made by the Parliamentary Ombudsman or the Chancellor of Justice on his own initiative.

In 2011 the Ombudsman received more than 4,100 new complaints and issued decisions on nearly 4,400 complaints and matters that he had investigated on his own initiative. In 2015 the Ombudsman received more than 4,700 new complaints and about one third of them, nearly 1 600, were related to procedures of municipalities. The largest group of complaints concerned social welfare services, about 800, and about 500 concerned health care services, while about 150 concerned general administration and the decision-making power of municipalities. In 2011 the Chancellor of Justice received more than 1,400 new complaints and issued decisions on nearly 1,700 complaints and matters, while in 2015 he received more than 1,800 new complaints and issued decisions on nearly 2,000 complaints and matters.

119. In view of the aforementioned legal and administrative practice, the rapporteurs conclude that Finland fully complies with Article 8 of the Charter.

#### **4.7. Article 9: Financial resources**

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

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

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

120. Municipalities have real control of their finances and they can control their revenue base (taxation and fees) and debts with considerable freedom. The state grant system guarantees each municipality a calculated share of the overall grant without subsequent state control, risk of reimbursement or earmarking.

121. The municipalities in Finland have the right to collect municipal tax. Each year, the municipal council sets the income tax rate, which, for instance, is 22% in the town of Raasepori at the moment. Furthermore, the municipality collects 0.37-1.35% of real property tax depending on the nature of the real property, and a share of the corporate tax mainly corresponding to the portion of the corporate tax paid by local corporate taxpayers. In the case of Raasepori, for instance, these taxes, taken altogether, constitute 57% of the municipality's income. Moreover, the municipalities have the right to collect dog licence fees but a very few municipalities actually do so.

122. The Finnish Tax Administration deals with taxation on behalf of the municipalities. The municipalities pay a part of the government's tax-related expenses. The municipality is not entitled to collect any separate local taxes.

123. The current legislation describes the financial equilibrium quite clearly. If the yearly municipal financial account registers a cumulative deficit, the municipality must prepare a balancing plan for 4 years to bring it back into surplus. Municipalities are also very well aware of the economic indicators that show the need for an assessment procedure and can adjust their activities to prevent it from happening. The accounts must be in balance or in surplus. A deficit in a municipality's balance sheet must be eliminated within no more than four years from the start of the year following adoption of the financial statements. In its financial plan, the municipality must decide on specific measures to eliminate the deficit during the stated period.

124. Municipalities have the power to change tax rates, take out loans, add fees, and control cost development through benchmarking, etc. Municipal financial departments usually have considerable expertise and they regularly make use of externally developed cost-control techniques and services. In optimal circumstances, civil servants and local politicians have a good mutual understanding of their responsibility to keep expenditure on a well-balanced course. This is a challenging task in circumstances where the public demands more and better services and measures targeting quality levels and the range of services available are unpopular.

125. With regard to the upcoming reform, according to the parliamentary Green party group, the municipalities are mainly concerned about their funding, the details of which are still undecided. The municipalities could lose more than half their functions and funding. It remains to be seen whether the remaining funding will be adequate to cover the necessary services, building and maintaining the infrastructure linked to them and managing debt already accrued. Municipalities are also concerned about the continuity of the *chain of service* when the municipality provides a certain part of a service and the region the rest. For example, employment services are linked to social services, etc. It is possible that regions will contract out some of their functions such as employment services to larger municipalities if these municipalities have established well-functioning practices. It is preferable to maintain flexibility in the division of labour. If the ongoing reform proceeds as planned, the self-government of regional bodies will be more restricted than that of the current municipalities, and their finances will be more tightly controlled.

126. The balance between responsibilities and finance (the commensurability principle, Article 9, para. 2, of the Charter) has been a much debated question in Finland for many years. The Constitutional Law Committee of the Parliament has stated: "*When imposing legal obligations (on local authorities) it must be ensured that they have actual capacity to fulfil their duties*" (25/1994). The Constitutional Committee often refers to this statement when evaluating the financial capability of local authorities to perform new functions. Furthermore, in Prime Minister Sipilä's Government Programme of 2015 it is said that "*The Government will not assign municipalities any new duties or obligations during the term of the government. If cuts are made in central government transfers to local government, the Government will reduce municipalities' duties to the same extent*". During the visit, the Mayor of Raasepori pointed out that in the past it had happened that the State had delegated new

tasks to municipalities but failed to compensate them adequately for carrying them out. During the consultation process, the Government expressed its intention to solve this problem. The current Government has promised to review and reduce municipal duties through the so called *Reform 2: Cutting local government costs by removing tasks and obligations*. A Rapid Response Query on the subject was also addressed to the Council of Europe Centre of Expertise for Local Government Reform in February 2016. Several of Finland's national governments have made statements in government programmes at various times in which they attempted to make their stance on this issue as clear as possible, but it has sometimes been challenging to strike the right balance between the provision of funds to cover the costs of some new duties and the tendency for sectoral ministries to add substantial numbers of tasks while failing to investigate sufficiently what their impact will be on municipal finances. The AFLRA has made its opinion quite clear on this subject and has helped to establish clear guidelines on how funding of new duties should be arranged.

127. The government programme for local government finances contains a special section looking into the adequacy of funding in various municipalities. The analysis tool (Programme for Local Government Finances) has been developed over the last few years and is currently orientated towards various municipal size categories (by population) and the financial burden is expressed in terms of the need to raise local income taxes. The Ministry of the Environment and the Ministry of Transport and Communications are now involved in the preparation of this programme, in cooperation with the Ministry of Social and Health Care and the Ministry of Education and Culture, in order to provide a better guarantee that any legislation they prepare will take due account of local government and local financing. As the programme stands, there are obvious challenges concerning the balance between finances and duties. The programme highlights the groups of municipalities that must be especially careful over the next few years.

128. In the revised Local Government Act, financial issues are mainly dealt with in Part VI, from Sections 110 to 125. The emphasis in this part of the Act is on tighter control of local finance. Local councils are expected to assume a key role in managing municipalities and to exert greater control over the whole local authority as a corporate entity, including monitoring of municipal companies. The new legislation underlines the role of financial planning in striking a better economic balance, controlling debt and assessing the risks run by the municipality.

129. For municipalities facing particular economic challenges there has been a so-called assessment procedure that entered into force in 2007 (see Section 118 from the LGA). This procedure has focused on operational matters and helped municipalities to balance their finances through concrete measures and good co-operation with the State. In this way, Finland has also followed Recommendation 311 (2011) when dealing with this problem. According to the Finnish Ministry of Finance during the consultation process, a municipality must begin the procedure with regard to indicators related to indebtedness, the municipal income rate, the balance of budget and accumulated deficit. Section 118 of the LGA provides that the procedure can be started in case of excessive municipal budget deficit for more than four years or in the event that two successive annual financial statements of a municipality show some indicators as a deficit per resident of a certain amount, a relatively high local rate for the income tax or an accumulated deficit of local authority corporations. All indicators are defined by the law, and the Finnish authorities stressed that the new legislation of 2015 introduced some minor simplifications in the indicators as well as taking account of indicators covering the whole local authority corporation. Another major change is that joint municipal authorities will be included in the procedure in addition to single municipalities (see Section 119). Joint municipal authorities are assessed by one designated auditor and his/her report is sent to all the municipalities in the joint body rather than to a special working group consisting of ministry and municipality members as is the case when a single municipality is being assessed.

130. The updated state grant system has been in use since the beginning of 2015. The new system has made financing more open and transparent by reducing the number of factors entering into the calculation and refining cost factors to better reflect actual changes in costs in municipalities. The new system brought in some changes in state grants in the remotest areas, helping them to fill some gaps in financing and thus better guaranteeing basic services for citizens.

131. Through the new Local Government Act, the new programme for local government finances was introduced (Section 12). The aim of the programme is to evaluate the current situation of local government finances and to calculate possible changes over the next few years. The programme is part of a Public Sector Finances programme (based on and introduced under EU legislation) and it is intended to provide a picture of local government finances as a whole and an indication of the level of

development in different-sized municipalities. The programme is not aimed at a specific municipality, but it provides a general economic framework for them to assess their current situation and how their finances may evolve in the future. The programme is linked to the state budget and restricted by an expenditure limit set by the government. This is a fixed framework for the term of government, whose goal is to strike a better balance between services and finances (in local authorities). The government has set key goals to reduce the burden of municipalities' duties while at the same time achieving cost savings in social and health care services.

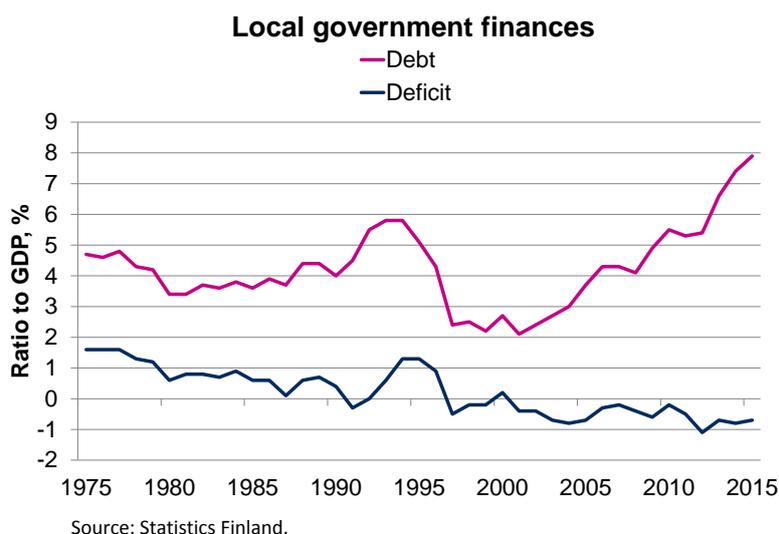
132. According to the Left Alliance Party the new regional authorities should have the right to collect taxes and hence have the best possible control over the funding and management of their responsibilities. The SD (Social Democrat) parliamentarians have also argued that if the new regional level is not given the right to collect taxes or to take out loans for investments, it is questionable whether this kind of reform can be called "regional" because in practice it will function in practice as a part of state government and the only aspect of self-government will be the election of regional councils. However, according to the legal advisor at the AFLRA, there is an outstanding question as to whether the regions are allowed by the constitution to levy taxes. Article 9, para. 3, of the ECLSG provides for the right to levy taxes but this right is denied to regions based on the argument that the Constitution does expressly allow this only for municipalities. During the consultation process, the Finnish Government acknowledged that, according to the draft legislative proposal, "*the new regional level will have a sound base for financing" It will receive state grants on a calculatory base [...] The regions could also freely define and set the level of user fees and charges*". Therefore, "*the taxation right of the new regions can only be analysed in the next phase of the reform*". However, the rapporteurs wish to draw the attention of the Finnish authorities to the need of tangible guarantees in tax matters for genuine regional democracy. Both the Charter and the Reference Framework for Regional Democracy require that, in the implementation of their own competences, regional authorities shall be able to rely in particular on resources of their own of which they shall be able to dispose freely. These instruments also provide that the financial systems, on which resources available to regional authorities are based, shall be of a sufficiently diversified and buoyant nature.

133. From a public finance viewpoint, and in order to be successful, social welfare and health care reform requires clearer steering by the government. Above all, it requires all the stakeholders to take joint responsibility. This is the view of the rapporteurs appointed by the Ministry of Social Affairs and Health. While people's well-being and health need to be improved, it is also important to be aware of the limits of available financial resources. Proponents of the reform say that change is needed because of the growing need for services among the ageing population, the changing range of illnesses, wider possibilities for treatment and greater public expectations, which, when taken together, create strong pressure for mounting costs. Slow economic growth and a high total tax rate by international standards are an incentive to find new ways to curb rising costs. Lastly, there are major inequalities between different areas and groups.

134. The trend is towards an older age structure. Because of this, extra staff and infrastructure capacity is needed because of high retirement rates among staff, especially in many remote municipalities. Municipal services could be more efficiently set up in the larger areas, with tighter control on investments and duties, yet at the same time a better guarantee of public services for more vulnerable, risk-prone remote areas.

135. Because of tight public finances now and in the future, proper control must be exercised over cost development and investments in all parts of the country, preventing overlapping investments and channelling resources to the right measures. One of the key challenges is to find a capable workforce with essential economic and administrative skills and to prevent the unnecessary loss of good workers. Small municipalities are not always the likely winners – they are increasingly challenged by the shortage of capable staff, leading to increased workloads and compromises on the quality of the expertise provided in some cases. By curbing duties, improving organisation, developing planning and digitalising services, it is possible to make savings. The savings target for the healthcare and social welfare reform package is €3 billion by the year 2029. The projected annual growth in healthcare and social welfare costs has to be cut from 2.4% to 0.9% between 2019 and 2029. If the reform fails, it will leave many remote municipalities with the big challenge of balancing their budgets with limited means.

136. Moreover, the economic crisis has reduced the municipal tax base and increased unemployment and social security costs. The debt to GDP ratio has risen rapidly since 2008.



137. Finnish public finances have been running a deficit since the end of the last decade. The budgetary position is set to improve slowly in the years ahead, but still it threatens to remain in deficit. General government debt to GDP ratio has increased for several consecutive years, and there is no significant turnaround in sight. To achieve long-term sustainability in general government finances, the budgetary position would have to recover to show a surplus of around 2% of GDP by the end of the decade. The economic crisis has also had an impact on municipalities. High unemployment rates and structural unemployment have increased municipal expenditure and had an adverse effect on tax revenues. Central government has also cut its transfers to local government as part of the measures to strengthen central government finances. In addition to the economic crisis, the municipalities are burdened by the effects of the ageing population, which increases the demand for services. However, so far municipalities have been able to consolidate their finances and fulfil their tasks and services. The central government has also tried to limit the impact on municipalities by temporarily increasing local authorities' share of corporate income tax. This temporary increase will end in 2016, however. Furthermore, according to the current government programme, central government transfers to local government will not be cut further without enabling a similar cut in local government expenditures by reducing municipalities' duties and obligations.

138. With the upcoming regional reform, it is currently planned to introduce some legislative restrictions, especially on investments. This is mainly the result of municipalities' current actions. They have generally kept their finances reasonably under control, but there have been some cases of excessive investments in the social and health care sectors (hospital projects). These restrictions are necessary to prevent legal measures which may undermine the whole basis of public finances.

139. On the whole, Finnish local authorities have shown good understanding of the effects of the economic crisis at state level, including the increased burden on the national debt. The municipal sector has also understood its important role in keeping local investments and the economy as a whole going. It has been able to invest a great deal in municipal infrastructure, roads, other transport networks and hospitals and some renovation of other buildings. Lower demand has allowed better investment deals to be negotiated in many cases and the price of loans has also been very reasonable. There have been some exceptions, but most investments have been controlled and cost-effective. In addition to controlling investments, the municipalities have taken a very cautious approach in recent years, aiming to exercise better control over their finances, with positive results in many cases. Because finances are tight, the State has made some cuts to state grants, but it has partly offset this by giving municipalities a temporarily larger share of corporate tax (increasing from 5 to 10% between 2009 and 2015).

140. The rapporteurs conclude that at present, Finland fully complies with Article 9 of the Charter. As in most countries, there are some concerns regarding the commensurability principle (paragraph 2 of Article 9) as additional tasks have been transferred to municipalities and complaints have been made about the lack of corresponding financial resources. However, it is obvious that considerable efforts have been made to introduce appropriate criteria and procedures to provide for financial resources that are commensurate with municipal responsibilities, and progress has been made in this respect. The Finnish authorities have also tried to deal with the problem of over-indebted municipalities, which

was highlighted in the Congress's previous monitoring report and in the related Recommendation. New rules and procedures have been introduced to tackle the problem of indebtedness. The current financial situation of Finnish municipalities appears satisfactory from the Charter standpoint. With respect to the SOTE-reform, the Finnish Government acknowledged during the consultation process that regions will be "free to set all sorts of charges and fees for services they provide, within the limits of legislation". Moreover, it stated that regions will have "free control to use resources and hire personnel to manage the services or resources", that the state grants to the regions will not be calculated on a discretionary basis and that "there will be no earmarked transfers to regions". Nevertheless, the ongoing regional reform has given rise to some concerns as, under government plans, the new autonomous regions will be denied tax-levying rights (at least during the initial stage of their existence) and this would unlikely satisfy the requirements of paragraphs 1 and 3 of Article 9, and of the Reference Framework for Local Democracy. Furthermore, the rapporteurs express their concerns with regard to the financial system for the new SOTE regions that may fail to be of a sufficiently diversified and buoyant nature, while state grants and financial transfers to the new regions would be mostly used for a limited number of specific services and projects, leaving a narrow margin of discretion to the regions' elected councils. Insofar as the regional competences for funding would remain limited, this might contravene *de facto* paragraph 7 of Article 9 of the Charter.

#### **4.8. Article 10: Local authorities' right to associate**

##### **Article 10 – Local authorities' right to associate**

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

141. The freedom of association of local authorities is guaranteed by Article 13 of the Constitution. Intermunicipal co-operation is very common in many different service sectors and many municipalities have had good experiences with it. However, as indicated above, there are problems related to democracy (indirect accountability) when forms of co-operation and specific arrangements are increased in certain service sectors. Furthermore, co-operation of this type does not seem to address the need for economic stabilisation and the potential need to develop the municipality as a whole (instead of fragmented co-operation in various service sectors). These are the problems that the current government seems to be willing to address by creating the new directly-elected level of government.

142. As regards local authorities' right to associate, the Association of Finnish Local and Regional Authorities (AFLRA), embodies the implementation of the principle laid down in Article 10. This Association includes both local and regional authorities and constitutes a strong organisation promoting the interests of local government and an important, respected partner for all central public institutions in Finland.

143. In conclusion, the rapporteurs are of the opinion that Finland fully complies with all the paragraphs of Article 10 of the Charter.

#### **4.9. Article 11: Legal protection of local self-government**

##### **Article 11 – Legal protection of local self-government**

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

144. As already mentioned, Finland has no constitutional court, but civil and administrative courts have the power to review the constitutionality of legislation enacted by parliament if this legislation is to be applied in an actual case. If they find that a statute or a provision thereof is in clear conflict with the

Constitution, the courts may decide not to apply the suspect legal provision in that specific case, but they do not have the power to set aside the said provision. On the other hand, a municipality can challenge any administrative decision through an administrative appeal. According to information provided by the Supreme Administrative Court of Finland, municipal appeals mostly deal in practice with various internal disagreements or individual claims. Disputes between municipalities also occur, e.g. with regard to various costs or intermunicipal co-operation. As a rule, however, municipal self-government rarely focuses primarily on appeals or court rulings. If a municipal decision has been repealed by the (Regional) Administrative Court, only the municipality may appeal against the court's decision. At the Supreme Administrative Court, about 150-200 cases per year are categorised as "municipal law cases" (out of a total of 4,000).

145. The rapporteurs conclude that Finnish local authorities have the right of recourse to a judicial remedy in order to secure their rights and therefore Finland fully complies with Article 11 of the Charter.

## 5. CONCLUSIONS

146. In relation to the five points of concern which were raised in Recommendation 311 (2011) it should be stressed that Finland, a country already enjoying a very high level of local democracy, responded at least partially to the Congress recommendations.

147. The Additional Protocol (CETS No. 207) was ratified by that country on 1st February 2012. The rapporteurs welcome the efforts that have been made by Finnish authorities to strengthen direct democracy at local level through the introduction in the new Local Government Act of diversified and effective opportunities for participation.

148. The rapporteurs have paid particular attention to the measures taken by the Finnish authorities to modernize the equalization system and also to merge smaller municipalities in order to ensure an equal standard of services within the territory. The upcoming Regional reform and the introduction of autonomous regions (so-called "counties" or "SOTE Regions") could be seen as a step in this direction.

149. Moreover, the role of the Parliamentary Ombudsman at local level has been strengthened, through several means including the development of new technologies; together with the Chancellor of Justice, they exercise an effective oversight to ensure good administration by central and local authorities and take an important part in implementing fundamental and human rights at local level in Finland. In the context of hard financial times the resources of the Ombudsman are limited but satisfactory. The rapporteurs also note the existence of patients' ombudsmen in hospitals and social ombudsmen at municipal level, as well as the creation of the Human Rights Centre under legislation which entered into force in 2012.

150. The rapporteurs welcome the fact that the evaluation of the rationalization of state regional structures made in cooperation with the AFLRA seems to have led the Finnish government towards the creation of a second tier of local government at the regional level, in accordance with Congress Recommendation 66 (1999) on regional democracy in Finland. However, the rapporteurs note with concern that, according to the Finnish Government, it should be ascertained whether the Charter can be applied to the regions that are being established in Finland. Concerning the local level, they noted with satisfaction that new rules have been introduced in order to avoid excessive indebtedness of municipalities and that the aim of the welfare and healthcare reforms are to reduce municipal deficits.

151. Local democracy remains deeply rooted in Finland and the rapporteurs noted continuous progress.

152. The rapporteurs would like however to express their concerns about the weak legal status of the European Charter of Local Government in the domestic legal system of Finland. As an international treaty, the Charter was ratified and entered into force by an Act of the Parliament (Art. 95 of the Finnish Constitution). During their visit, the delegation was informed by some academics (professors and experts) that compliance of Finnish legislation with the Charter is not subject to supervision by the Constitutional Law Committee since, formally speaking, according to Article 74 of the Finnish Constitution ("Supervision of Constitutionality"): "*The Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties*". In other words, the Charter is treated as one more Law on Local Government in Finland, which could also offer an explanation for the extremely rare references of the Charter in court rulings in Finland. By comparison, Human Rights Treaties have stronger constitutional status and compliance with international human rights treaties is supervised by the Constitutional Law Committee. Moreover, the Supreme Administrative Court has assumed that the provisions of the Charter were considered so general that their function in practice would be limited to the interpretation of law in such a way as supports local self-government. This raises questions as to the actual status of the Charter in domestic law. During the consultation process, the Finnish Government has replied that the rare references to the Charter are due to the fact that the constitutional protection of local self-government is stronger than the Charter. The delegation has noted however some loopholes in the Constitution, such as the protection of the concomitant resources which is ensured prior to the adoption of legislation simply through the review of the Constitutional Law Committee. In this case, direct references to the Charter could still be useful.

153. The creation of the new autonomous regions in 2017 could enhance local democracy, transparency and political accountability. However, during the consultation process, the Finnish Government acknowledged that it is not yet clear if these new regions can be considered as local government to which the Charter shall be applied or whether they should be rather considered as “*an intermediate level*”. Concerning the first option, it should be underlined that the constitutional position of regions is very weak and it does not seem that they will obtain the right of taxation in a near future. Under the governmental plans, the funding of costly services such as social welfare and healthcare at the regional level will be allocated by the Government, partly from revenue nowadays given to municipalities, while the future regions will not be able to levy their own taxes, as provided by Article 9 para. 3 of the Charter. The Finnish authorities argued that the taxation right of the future regions “*cannot lead to a result where total tax ratio increases or to a situation where equal taxation deteriorates*” and it therefore requires a preliminary study “*that will be made in the next phase*” of the reform.

154. The rapporteurs are of the opinion that in order to maintain and reinforce the high level of democracy in Finland, the Finnish authorities should express a clear political will toward the creation of autonomous regions to which the guarantees of the Charter would apply. Moreover, and in the absence of clear case-law on the interpretation of Section 121 of the Finnish Constitution, the delegation is of the view that it may be fitting to consider an early amendment to the Constitution, which would describe the duties and privileges of the new autonomous regions and also give powers of taxation to the new regional tier of local self-government.

155. The transfer of responsibilities for social welfare and health care to the new regional tier of self-government may entail that 60% of the current municipal duties will be transferred to this new regional level. It should, therefore, be considered whether it would be possible, according to the subsidiarity principle (Article 4 para. 3 of the Charter), to introduce exceptions to this up-scaling of important functions, especially for large cities that can efficiently deal with these tasks.

156. Although the final form of regional self-government in Finland is still subject to an ongoing procedure that can bring important changes and amelioration, the reform plans that have already been publicized raise some further points of concern regarding their eventual conformity with the Charter. Apart from the absence of taxation rights, it seems that the new autonomous regions may also suffer from a lack of own resources in the sense of Article 9 para.1 of the Charter. Furthermore, it seems that the financial system of the new SOTE regions would not be of a sufficiently diversified and buoyant nature. Finally, according to current governmental projects, State grants and financial transfers to the new regions would not be earmarked. However as these grants are mostly designed to be used for a small number of specific services and projects, barely leaving space for policy discretion to the elected councils of the regions, they might be considered as earmarked in practice.

157. In municipalities, the question of resources which are commensurate with local government responsibilities (Article 4 para. 2 of the Charter) is emerging also in Finland, especially concerning new additional tasks for municipalities in the topics of employment and migration.

158. The risk of bureaucratization in local government should not be under-estimated. Large budgets and a large number of staff do not necessarily increase local government discretion. On the contrary they can signal overload with routine duties leaving narrow margins for political choices and priorities to locally elected persons, while strengthening bureaucracies. Political representatives who are accountable to the electorate should be the decision makers in municipalities and regions. This is the essence of local government and the core of the concept reflected in Article 3 of the Charter. Therefore, next to several practices and institutions promoting citizen's participation, new efforts should be made to enhance legitimacy and accountability of political representatives in Finnish local government through adequate institutional changes that should be considered.

159. Summarizing, the rapporteurs would like to express their satisfaction about the situation of local democracy in Finland and especially about the traditionally close partnership between the national Association of Local and Regional Authorities and the central government. The rapporteurs acknowledge that the financial crisis is obviously putting a lot of pressure on Finland, a highly developed welfare State with strong local governments. However this should not lead to over-focusing on efficiency and economy at the cost of local democracy. Priorities and options of the ongoing regional reform should stick to the principles set by the Charter.

160. For the Charter to be fully taken into account in Finnish domestic law and taking into account that the Charter is already considered to be part of the Finnish national legal order, the rapporteurs would like to call upon the Finnish authorities to consider an amendment to Article 74 of the Constitution in order to foster the legal status of the Charter in Finland and ensure the direct applicability and judiciability of its ratified provisions.

161. The rapporteurs would also like to invite the Finnish authorities to consider introducing a special status for Helsinki and its metropolitan area as regards the specificities of the capital city and the particular challenges it has to face and to continue negotiations concerning a special solution in the so called "growth services".

162. With regard to the current reforms package, the rapporteurs would suggest giving a strong emphasis to the nature of the new autonomous regions as self-government bodies. Therefore, taxation rights and a wider range of own resources should be introduced. Given the fact that the status of regions in the Finnish Constitution is minor to the status of municipalities, a corresponding constitutional amendment should include provisions for regional elections in Section 14, self-government and taxation rights in Section 121.

163. In accordance with the subsidiarity principle enshrined in Article 4 para. 3 of the Charter, the rapporteurs would like to recommend the introduction of exceptions concerning the up-scaling of tasks from municipalities to the regions, when these municipalities, especially in larger cities, are still capable of coping with these tasks and are closer to the citizen.

164. With regard to the existing municipal form of local government, apart from further encouraging ongoing efforts to improve the implementation of the commensurability principle and the conditions under which responsibilities at local level are exercised, the rapporteurs would like to express their worry about the fact that the political nature of local self-government seems to be overshadowed by technocratic and bureaucratic dynamics in many municipalities. Therefore, efforts remain to be made to encourage participatory practices and also to revitalize local politics and local representative democracy. This could be made through the introduction of direct election to Executive organs in order to increase direct accountability of the municipal executive to the citizens and eventually increase turnout in municipal elections which appears rather low compared to the range of local government responsibilities. Direct election of Executives would probably also attract more full-time and part-time politicians to elected posts.

165. In general, the rapporteurs note the satisfactory level of democracy that is deeply rooted in Finnish law and practice. By contrast, the weak applicability of the Charter in the domestic legal system, the weak application of the subsidiarity principle and the absence of a special status for the capital city raise some concerns. In particular, the rapporteurs trust that the Finnish national authorities will have at heart to extend genuine autonomy to the new regions, especially since Finland already benefits from a high level of local democracy.

**APPENDIX – Programme of the Congress Monitoring Visit to Finland****CONGRESS MONITORING VISIT TO FINLAND  
Helsinki, Lahti, Salo and Raasepori (17 - 19 May 2016)****FINAL PROGRAMME****Congress delegation:****Rapporteurs:**

Mr Artur TORRES PEREIRA	Rapporteur on local democracy Chamber of Local Authorities, EPP/CCE <sup>9</sup> Member of the Monitoring Committee of the Congress President of the Municipal Assembly of Sousel (Portugal)
Mr Karim VAN OVERMEIRE	Rapporteur on regional democracy Chamber of Regions, NI-NR <sup>10</sup> Member of the Monitoring Committee of the Congress Member of the Flemish Parliament (Belgium)

**Congress Secretariat:**

Ms Stéphanie POIREL	Secretary to the Monitoring Committee
Mr Romain PINCHON	Co-Secretary to the Monitoring Committee

**Consultant:**

Dr Nicolaos-Komninos CHLEPAS	Member of the Group of Independent Experts on the European Charter of Local Self-Government (Greece)
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**Interpreters:**

Ms Anne HUPLI
Ms Laura MINKKINEN

The working language of the meeting will be Finnish. Interpretation from and into English will be provided.

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<sup>9</sup> EPP/CCE: European People's Party Group in the Congress  
<sup>10</sup> NI-NR: Non Indicated / Non Registered

**Tuesday 17 May 2016  
Helsinki and Lahti**

- **National Delegation of Finland to the Congress:**

*Full members of the Finnish Delegation to the Congress:*

**Mr Risto RAUTAVA**, Head of the Finnish Delegation to the Congress, Helsinki City Councillor

**Ms Helena PIHLAJASAARI**, Deputy Head of the Finnish Delegation to the Congress, Regional Councillor of Central Finland

**Ms Liisa ANSALA**, Rovaniemi City Councillor

**Mr Juho EEROLA**, Kotka City Councillor

**Ms Hanna MARVA**, Member of the Board of the Regional Council of Satakunta

*Alternate members of the Finnish Delegation to the Congress:*

**Ms Sari JANATUINEN**, Member of the Kempele Municipal Council

**Mr Ensio VATANEN**, Member of the Juankoski Town Council

**Mr Risto ERVELA**, Member of the Southwest Regional Council

**Ms Saara ILVESSALO**, Member of the Southwest Regional Council

**Mr Juha ROSTEDT**, Member of the Lahti City Council

- **Independent Experts:**

**Mr Heikki KULLA**, Full member of the Group of Independent Experts on the European Charter of Local Self-Government

**Mr Erkki MENNOLA**, Alternate member of the Group of Independent Experts on the European Charter of Local Self-Government

- **Association of Finnish Local and Regional Authorities: (AFLRA)**

**Ms Sirpa PAATERO**, President

- **Regional Council of Pajjat-Hame:**

**Mr Jari PARKKONEN**, Executive Director

- **Lahti City Hall:**

**Mr Jyrki MYLLYVIRTA**, Mayor

- **Helsinki City Hall:**

**Mr Pekka SAURI**, Deputy Mayor

**Wednesday 18 May 2016  
Helsinki**

- **Eduskunta: (Parliament)**
  - Mr Olavi ALA-NISSILA**, Member of the Finance Committee
  - Ms Pirkko MATTILA**, Chair of the Administration Committee
  - Ms Annika LAPINTIE**, Chair of the Constitutional Law Committee
  
- **Joint meeting with the Parliamentary Ombudsman and the Chancellor of Justice:**
  - Ms Maija SAKSLIN**, Deputy Parliamentary Ombudsman
  - Ms Kristiina KOUROS**, Expert, Human Rights Centre
  - Mr Kimmo HAKONEN**, Secretary General, Office of the Chancellor of Justice
  
- **National Audit Office:**
  - Mr Marko MANNIKKO**, Deputy Auditor General
  - Mr Seppo ORJASNIEMI**, Principal Economist
  - Ms Kaisa KOPRA**, Project Adviser
  
- **Ministry of Local Government and Public Reforms:**
  - Mr Jari PARTANEN**, State Secretary
  
- **Ministry of Finance:**
  - Ms Paivi LAAJALA**, Director General
  - Mr Ilkka TURUNEN**, Ministerial Counsellor
  - Mr Markku MOLLARI**, Ministerial adviser
  - Ms Inga NYHOLM**, Ministerial adviser
  
- **State Department of Åland:**
  - Mr Peter LINDBACK**, Governor

Thursday 19 May 2016  
Salo and Raasepori

- **Supreme Administrative Court:**  
Dr Pekka VIHERVUORI, President  
Ms Paivi PIETARINEN, Secretary General
- **Salo City Hall:**  
Mr Antti RANTAKOKKO, Mayor
- **Raasepori / Raseborg City Hall:**  
Mr Tom SIMOLA, Mayor  
Ms Leila ANDERSIN, City Counsel  
Ms Patricia REHN, Group Chief Legal Officer  
Ms Marie SANDBERG, PR Officer