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Monitoring of the application of the European Charter of Local Self-Government in the Netherlands

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (*Monitoring Committee*)

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Summary

This report follows the fourth monitoring visit carried out remotely in the Netherlands since the country ratified the European Charter of Local Self-Government in 1991.

The report acknowledges the long tradition of local democracy and local self-government in the Netherlands, rooted in a political culture that favours negotiation, compromise and agreement between levels of government. It also welcomes the positive evolution of the 2015 decentralisation reform, which has led to the transfer of additional tasks and responsibilities to the local level, particularly in the social sphere, nature management and spatial planning.

However, the report expresses particular concerns over the appointment procedure of mayors and King's Commissioners, which has not been changed in the legislation to provide for their democratic election by the citizens. Furthermore, there is no direct recognition of the principle of local self-government in the legal framework of the Netherlands. The report also deplores the persistent lack of clarification and overlap of competences between municipalities and provinces. It points out that local government financial resources are not commensurate with the additional tasks municipalities must perform since the 2015 decentralisation reform, in particular in the social sphere.

Consequently, the recommendation urges national authorities to replace the appointment of mayors and King's Commissioners by democratic election, to ensure the citizen's rights to participate in the conduct of local public affairs and comply with fundamental principles of democracy. It also invites the Dutch authorities to match the additional competences that the municipalities must perform following decentralisation, in particular in the social and youth support area, with commensurate financial resources; to expand the municipal and provincial taxing capacity; to diversify the local financial resources; to revise the legislation regulating intermunicipal cooperation to strengthen the position of the municipal council. Finally, Dutch authorities are encouraged to ratify Articles 7.2 and 8.2 of the Charter which are already applied in practice.

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

RECOMMENDATION 464²

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

- a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;
- b. Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulating that “the Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government”;
- c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;
- d. the Congress priorities set up for 2021-2026, in particular priority 6b that concerns the quality of representative democracy and citizen participation;
- e. the Sustainable Development Goals (SDGs) of the United Nations Development Programme for 2030, particularly goals 11, for sustainable cities and communities, and 16, for peace, justice and strong institutions;
- f. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;
- g. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;
- h. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities, adopted on 4 April 2019;
- i. the previous Congress recommendation on local and regional democracy in the Netherlands (Recommendation 352 (2014));
- j. the present explanatory memorandum on the application of the European Charter of Local Self-Government in the Netherlands;
- k. the contemporary commentary on the explanatory report to the European Charter of Local Self-Government adopted by the Congress Statutory Forum on 7 December 2020.

2. The Congress notes that:

- a. The Netherlands signed the European Charter of Local Self-Government (ETS No. 122, hereafter “the Charter”) on 7 January 1988 and ratified it on 20 March 1991. At the time of ratification, the Netherlands made several “declarations” pertaining to different articles of the Charter, on the grounds of Article 12, paragraph 2 of the Charter: namely, that the Netherlands will not consider itself bound by the provisions of Article 7, paragraph 2; Article 8, paragraph 2; Article 9, paragraph 5; and Article 11 of the Charter. Moreover, and in accordance with Article 13 of the Charter, the Netherlands declared that it intended to confine the scope of the Charter to provinces and municipalities and that the Charter would apply to the Netherlands in Europe (on the grounds of Article 16 of the Charter). The Charter came into force with respect to the Netherlands on 1 July 1991.
- b. The Netherlands signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207) on 16 November 2009 and ratified it on 13 December 2010 with entry into force on 1 June 2012.

² Debated and adopted by the Congress on 26 October 2021, 1st sitting (see Document [CG\(2021\)41-05](#), explanatory memorandum), rapporteur: Vladimir PREBILIC, Slovenia (L, SOC/G/PD).

c. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in the Netherlands in the light of the Charter. Vladimir PREBILIC, Slovenia (L, SOC/G/PD) and Robert-Csongor GRUMAN³, Romania (R, EPP/CCE), have been assigned the task of preparing and presenting to the Congress a report on the monitoring the application of the European Charter of Local Self-Government in the Netherlands. The rapporteurs carried out monitoring meetings with representatives of various institutions at all tiers of authority, remotely, from 25 to 27 January 2021.

3. The co-rapporteurs wish to thank the Permanent Representation of the Netherlands to the Council of Europe and all those whom they spoke to during the remote meetings for their assistance.

4. The Congress notes with satisfaction that in the Netherlands:

a. local democracy and local self-government have a long tradition and are rooted in political culture that favours negotiation, compromise and agreement between levels of government;

b. a major decentralisation reform launched in 2015 has led to the transfer of additional tasks and responsibilities to local level, particularly in the social sphere, nature management and spatial planning. The mandated regulation and management of tasks ("medebewind") has also evolved into decentralisation, which is increasingly used and should permit wider local autonomy in carrying out those tasks;

c. there is a wide range of different consultation activities and inter-administrative agreements as well as monitoring of these activities through the Council of State;

d. municipalities actively cooperate in many spheres, including the labour market, youth care, psychological care and energy transition;

e. de-constitutionalisation of the appointment of mayors and King's Commissioners has opened the way for the legislator to regulate and eventually replace the appointment system by the election of mayors and King's Commissioners.

5. The Congress expresses concern, however, over the following points:

a. the appointment procedure of mayors and King's Commissioners has not been changed in the legislation to provide for their democratic election by the citizens. There are no clear plans for such a shift notwithstanding the fact that their role as political figures has become much more prominent;

b. there is no express or direct recognition of the principle of local self-government in the legal framework of the Netherlands, neither in the Constitution nor in legislation;

c. decentralised authorities do not have a legal basis for challenging central government decisions claiming the violation of their right to local self-government through judicial means;

d. there is a persisting lack of clarification and an overlap of competences between municipalities and provinces;

e. local government financial resources are not commensurate with the (additional) tasks municipalities must perform since the decentralisation reform, in particular in the social sphere;

f. municipalities' and provinces' own sources of income and their competence to raise taxes remain limited;

g. provinces and municipalities continue to financially depend on the central government since they are mainly funded by grants from the central level. Local resources are also bound by a correlation with total spending at central level that reduces the predictability of resources and complicates medium-term planning;

h. emerging of a new intermediate level of administration, between municipalities and provinces, as result of regional cooperation, in which many municipalities engage, raises questions of democratic control and accountability of such governance structures;

³ At the moment of the presentation of the draft explanatory memorandum, Mr Robert-Csongor GRUMAN was no longer a Congress member.

i. although local office holders can freely exercise their functions, in line with Article 7.1 of the Charter, there have been recent incidents of aggression against mayors, which have given rise to concerns as regards the security environment for execution of local mandates.

6. The Congress recommends that the Committee of Ministers invite the Dutch authorities to:

a. replace the appointment of mayors and King's Commissioners by democratic election, to ensure the citizens' right to participate in the conduct of local public affairs and comply with fundamental principles of democracy;

b. recognise the principle of local self-government in the Constitution and/or legislation;

c. entrench the municipal tasks in the Municipalities Act and clarify the distribution of municipal and provincial competences by revising relevant sectorial legislation;

d. match the additional tasks that the municipalities must perform following decentralisation, in particular in the social and youth support area, with commensurate financial resources, while providing targeted support to municipalities in need; the targeted measures should be assessed taking into account a financial divide between rural and urban municipalities;

e. expand municipal and provincial taxing capacity by increasing the share of resources coming from local taxes (or creating a similar secure base, such as a share in a national tax). This would strengthen the financial autonomy of the municipalities and provinces and reduce dependency on transfers provided by the central government;

f. diversify the local financial resources and review the system of indexing of total amount of general transfers to total central government expenditures that creates a pro-cyclical correlation between local and central spending, so as to ensure a better predictability of financial resources, which are made available to municipalities through transfers;

g. revise the legislation regulating intermunicipal cooperation to strengthen the position of the municipal council in the joint arrangements within regional areas in accordance with the principle of democratic control, legitimacy and accountability for the decisions taken;

h. improve the security environment of the exercise of local mandates by taking all possible measures to protect local office holders from all kinds of threats and aggression;

i. ratify Articles 7.2 and 8.2 of the Charter, which are already applied in practice.

7. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the application of the European Charter of Local Self-Government in the Netherlands and the accompanying explanatory memorandum in their activities relating to this member State.

EXPLANATORY MEMORANDUM

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

1. On a regular basis, the Congress of Local and Regional Authorities (hereinafter referred to as "the Congress") shall prepare 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 on Local Self-Government are implemented (Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress).

2. The Kingdom of the Netherlands (hereafter "the Netherlands") signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 7 January 1988 and ratified it on 20 March 1991. The Charter entered into force with respect to the Netherlands on 1 July 1991. At the time of ratification, the Netherlands made several "declarations" pertaining to different articles of the Charter, on the ground of Article 12, paragraph 2 of the Charter: namely, the central government declared that it considered only Article 9 of the Charter to have a bearing on the financial resources of local authorities. This means that municipalities and provinces cannot claim additional financial support from the State for employment conditions of their staff under Article 6 para. 2 of the Charter. In addition to the declarations, the Netherlands does not consider itself bound by the provisions of Article 7, paragraph 2; Article 8, paragraph 2; Article 9, paragraph 5; and Article 11 of the Charter. Moreover, and in accordance with Article 13 of the Charter, the Netherlands declared that it intended to confine the scope of the Charter to provinces and municipalities and that the Charter would apply to the Netherlands in Europe (on the ground of Article 16 of the Charter).

3. The Netherlands has signed and ratified other Council of Europe conventions, in the domain of local and regional democracy: the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106; ratified on 26 October 1981 with entry into force on 27 January 1982), the Convention on the participation of foreigners in public life at local level (ETS No. 144 ratified on 28 January 1997 with entry into force on 1 May 1997, the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159, ratified on 9 May 1997 with entry into force on 1 December 1998) and the Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No. 169: ratified on 11 August 1999 with entry into force on 1 February 2001).

4. The Netherlands signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207) on 16 November 2009 and ratified it on 16 December 2009 with entry into force on 1 June 2012.

5. Vladimir PREBILIC, Slovenia (L, SOC/G/PD), Rapporteur on local democracy, and Robert-Csongor GRUMAN, Romania (R, EPP/CCE), Rapporteur on regional democracy, were instructed by the Monitoring Committee to prepare a report on the Netherlands and to submit it to the Congress. The Rapporteurs were assisted in their work by Prof. Dr.jur. Jens WOELK, consultant with the Group of Independent Experts on the European Charter of Local Self-Government, and by the Congress Secretariat. The delegation visited the Netherlands from 25 to 27 January 2021, due to the Covid-19 pandemic in a remote mode, with online meetings.

6. During the visit, the Congress delegation met with representatives of State institutions (Parliament, Ministry of the Interior, Ministry of Finance), judicial institutions (Council of State, *Raad van State*), the Ombudsman, the Association of Municipalities (VNG) and the Association of Provinces (IPO), representatives of the authorities of the Province of South Holland, local authorities of The Hague, Enschede and Gemert-Bakel. The detailed programme of the visit is appended to this document.

7. The present report has been drafted on the basis of the information received during and after the remote meetings in the Netherlands, on the relevant legislation and on other information and documents provided by the representatives of the Dutch authorities. Information provided by experts, appropriate bibliography and research have also been used.

8. The delegation would like to thank all interlocutors, and in particular the Permanent Representation of the Netherlands to the Council of Europe, the Dutch association of Municipalities (VNG) and the Dutch association of Provinces (IPO) for their very warm welcome and proactive assistance during the meetings.

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

9. The Netherlands is a constitutional monarchy. The Head of State is the Monarch (currently King), whose function is largely ceremonial, though potentially influential (while the current King does not interfere in the formation of new coalition governments, his mother did so, in the past).

The Constitution of the Netherlands was adopted in 1815 (substantially revised in 1848) and has been amended several times since then (the last time was in 2018, regarding the de-constitutionalisation of the Mayors' and King's Commissioners' appointment procedure).

10. Legislative power is held by a bicameral Parliament. The Second Chamber (*Tweede Kamer* or House of Representatives) has 150 seats, is directly elected every four years using proportional representation and has greater legislative power. The First House (*Eerste Kamer* or Senate) represents the regional, territorial element and consists of 75 members, who are indirectly elected, i.e. appointed for a four-year term by the 12 Provincial Councils.

11. Executive power is exercised by the Government. Based on parliamentary election results, the Monarch appoints the Prime Minister, who then chooses the members of the Council of Ministers (in practice, Parliament and parties play the central role in the formation of a new coalition and the government). The Council of Ministers plans and implements the Government policy. The Ministers are responsible to the Parliament, collectively and individually.

12. The Prime Minister is usually the leader of the largest party in the House of Representatives. Governments formed by a coalition of different parties are the rule. They agree upon a coalition programme to be implemented throughout the legislature.

13. A total of 28 parties took part in the 2017 elections with a turnout of 81.9%. Prime Minister's People's Party for Freedom and Democracy (VVD) won the most seats, but it fell far short of a majority. In October 2017, a grand coalition was formed by Prime Minister's liberal VVD, the centrist D66 and centrist Christian parties CDA and Christian Union, which marked a moderate steer to the right compared to the previous government of VVD and the center-left Labour party. After recording a high score in the elections, the far-right party PVV (Party for Freedom) was isolated and excluded from the coalition but remained the second biggest party in Parliament.

14. Prime Minister's Coalition Agreement ("Confidence in the Future") included reforms of the labour market, the pension system, the tax system and the housing market, as well as an ambitious climate policy. Regarding local self-government, the governmental projects included supporting voluntary modifications of municipal boundaries, training of members of local and provincial councils as well as adopting a strategy for transparent decision-making and digitalisation of public administration at all levels⁴. In its term, the "third" cabinet of the Prime Minister repealed the referendum act, stating the act had not delivered what had been expected,⁵ and also de-constitutionalised the method of appointment of Mayors and King's Commissioners, thus allowing it to be changed by law.

15. Prime Minister confirmed on 31 October 2020 that he would lead the VVD party into elections thus seeking a fourth term as Prime Minister. Support for the VVD has risen considerably since the start of the year, but on 14 January 2021, his government resigned over a child benefit scandal (in which more than 20,000 families were wrongly accused of fraud by the tax authority)⁶ and remained in office as a caretaker government until the elections.

16. In the general elections that took place from 15 to 17 March 2021 (polling stations had been opened two days in advance for ensuring safe voting for elderly and vulnerable citizens), a record number of 37 parties competed for the 150 seats in the House of Representatives; turnout was at 82.6%. Prime Minister's liberal VVD placed first with 35 out of 150 seats, far short of a majority. While the Christian Democrats (CDA) lost support, the social-liberal D66 gained at the expense of the Socialists (SP), the social-democrats (PvdA) and Greens. The far-right Forum for Democracy (FvD) took votes from the far-right Freedom Party (PVV).

⁴ Congress Information report on municipal elections in the Netherlands (21 March 2018),

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808e4a9d>

⁵ In the Netherlands, from the entry into force of the Advisory Referendum Act (*Wet raadgevend referendum*) on 1 July 2015, until its repeal on 18 February 2018, most types of primary laws could be subjected to a suspensory, non-binding referendum if requested shortly after royal assent and subsequent proclamation. If a law was rejected by more than half of the votes cast, with a mandatory turnout of at least 30%, its entry into force was suspended indefinitely and a follow-up law had to be enacted that either repealed the law or provided for its entry into force.

⁶ See (<https://www.theguardian.com/world/2021/jan/15/dutch-government-resigns-over-child-benefits-scandal>).

17. However, caretaker Prime Minister's political future was already in doubt on 31 March 2021 after Parliament passed a motion of censure against him. The politically damaging move came just over two weeks after his liberal party won the most seats in parliament in the election, putting him in line to form his fourth governing coalition and possibly become the country's longest-serving prime minister. Accused by the opposition lawmakers of undermining public trust in politicians, he narrowly survived a motion of no-confidence.

18. The country's political landscape is fractured as shown by the composition of the House of Representatives which includes representatives of 13 political parties (2017, and 17 in 2021). In the last years, populist parties are on the rise and the electorate is growing ever more unpredictable. The rise of the far-right, anti-Islam Freedom Party (the anti-immigration party of Geert Wilders) and the collapse of the traditional Labour party and Christian Democrats add to the risk of instability.

19. The (European) Netherlands is a decentralised unitary state with a two-tier local government system. Local government in the Netherlands consists of 352 municipalities in 12 provinces and 3 special municipalities (public bodies) in the Caribbean, the Caribbean Netherlands, together 355 municipalities (as of 1 January 2021).

20. Alongside these two territorial levels of government there are water boards (*waterschappen*) preceding the central state and responsible for managing water (including flood control, irrigation and drainage, municipal waste-water purification, and water quality).⁷

21. In the past 30 years, local and provincial government in the Netherlands has been characterized by a trend towards decentralisation. The most important local government level is the municipalities, which in the last 60 years have seen a consolidation in their numbers from 1.000 to 355 for supposed reasons of efficiency and governing strength.

22. The Kingdom of the Netherlands also includes six overseas countries and territories in the Caribbean which are not part of the EU (Aruba, Bonaire, Curaçao, Sint Maarten, Sint Eustatius and Saba). These islands formed the Netherlands Antilles, which were dissolved in 2010. Currently, Aruba, Curaçao and Sint Maarten are independent countries within the Kingdom of the Netherlands, whereas Bonaire, Sint Eustatius and Saba are special municipalities of the country of the Netherlands.

23. Today, the (European) Netherlands is one of four constituent countries of the Kingdom of the Netherlands together with three other countries, Aruba, Curacao, and Sint Maarten, which are the larger Caribbean islands. The Kingdom is governed by the Charter for the Kingdom of the Netherlands and every country within the Kingdom has its own constitution (within the framework of the Charter for the Kingdom) and enjoys extensive autonomy. In practice, however, most of the affairs in the Kingdom are administered by the Netherlands, which makes up about 98% of the total land area and population.

24. The other three Caribbean islands (Bonaire, Sint Eustatius, and Saba, the smaller islands of the former Netherlands Antilles) are considered to be 'special municipalities' of the Netherlands proper. Legally, they are "public bodies" and fall under Article 134 of the Constitution (rather than Article 123 of the Constitution, on municipalities). Consequently, they do not have the same legal status as municipalities. In particular, there is no intermediate level of government, but they are directly connected to the central level. Municipal legislation applies extensively to these islands, but never fully, due to their special status.

2.1 Local government system (constitutional and legislative framework, reforms)

25. As in all unitary States, the legislative power rests with Parliament ('States-General', consisting of Senate and House of Representatives) and the government. Administrative power rests with the central government, insofar as it is not exercised by the provincial and municipal authorities. Provinces and municipalities may issue provincial and municipal regulations as long as the latter are in compliance with national law.

26. Local government has its own chapter in the Dutch Constitution: Chapter 7 (articles 123 to 133) contains provisions regarding the position of local public authorities within the Dutch unitary state. Article 124(1) of the Constitution gives provinces and municipalities the autonomy to adopt their own acts for their respective territories. It expressly states that the provinces and municipalities have the competence to regulate and administrate their internal affairs.

⁷ See the government's information on Provinces, municipalities and water authorities (<https://www.government.nl/topics/public-administration/provinces-municipalities-and-water-authorities>).

27. Nevertheless, the central government can legally change the powers conferred to provinces and municipalities. Article 124(2) of the Constitution enables the central government to demand cooperation from the Local and Regional Authorities (LRA) in executing national policies. This «mandated regulation and management» is called “*medebewind*” and can be a counterweight to local autonomy. However, the term “local self-government” as used in the European Charter of Local Self-government refers to both areas, autonomous tasks and services as well as mandated decentralised execution of national policies.

28. Article 132 covers the organisation of the provinces and municipalities and determines the taxes that may be levied by them.

29. The central pieces of legislation for the functioning of municipalities and provinces are the Municipalities Act and the Provinces Act. They provide a legal framework for both, the competences in autonomy and the *medebewind*, as well as for consultation between the Provinces and the Municipalities with the Central Government. Known as “framework Acts”, both Acts provide the legal framework for vertical coordination between the three levels of government from which other Acts may deviate only in exceptional circumstances. Other statutes that regulate different aspects of local and regional democracy are: (a) the Finances Law; (b) the General Administrative Law Act; (c) the Decree on the Legal Status for Council and Committee Members; (d) the BBv Decree (Provinces and Municipalities, budgets and accounts); (e) The law on intergovernmental financial relations (*Financiële Verhoudingswet*), (f) the Consolidation Act (*Wet Algemene Regels Herindeling*).

30. Article 132 of the Constitution establishes that the organisation of municipalities, and the composition and powers of their administrative organs are regulated by acts of Parliament, with the Municipalities Act (*Gemeentewet*) setting out the organisation of municipalities.

31. The Municipal Council (*Gemeenteraad* or *Raad*) is the representative body at the municipal level and the highest authority in the municipality. Its members are elected every four years. The day-to-day administration of the municipality is managed by the Board of the Mayor and the Aldermen (*College van Burgemeester en Wethouders*) and the Mayor (*Burgemeester*) as the municipality’s executive branch. The Mayor is selected by the Council and appointed by national government. He or she is responsible for public order and safety in the municipality, he/she chairs the Board as well as the Municipal Council guaranteeing regularity, fairness and conformity with legislation. Every municipality (and province) is nowadays required to vest its own audit office or committee.

32. The number of municipalities has considerably declined over the years, since there were 774 municipalities in the 1990s and 352 in 2021. In the past years, the decentralisation process has been focused on social policy, and municipalities were entrusted with new responsibilities in the field of youth care, long-term care and income support. Because of such important new responsibilities, stakes were higher for the 2018 local elections.⁸

33. In a multiannual perspective, municipalities will face the following challenges as key actors: digitalisation; energy and climate transition; inclusive society; democratic governance. These will also be priorities in the recovery from the Covid-crisis. Another huge challenge lies in municipal finances: an estimated 8 out of 10 local authorities faces a budget shortage over the coming years.⁹ Whereas this is exacerbated by Covid, the problem existed before, with cuts in the municipal fund in combination with a widening array of tasks delegated to the municipalities. A discussion on the redivision of the municipal fund raises particular concern with small, rural municipalities.¹⁰

34. The Netherlands is highly urbanized: 75 percent of the Dutch population lives in urban areas. Almost 50 percent of the total population is concentrated in the three largest urban regions where half of the national income is earned (Stead & Meijers, 2015). This creates de-facto differences and imbalances. As a – partial – response, there is a process of induced and incentivized bottom-up regionalization going on (see below), mainly through intermunicipal cooperation, which is not to be confused with the provincial level.

35. Provinces are governed by a locally elected provincial council, as the highest authority, and a provincial executive appointed by the members of the provincial council and chaired by the King’s Commissioner.

⁸ Congress information report on municipal elections in the Netherlands (21 March 2018), 17.09.2018 at [DisplayDCTMContent \(coe.int\)](https://display.dctm-content.coe.int/).

⁹ VNG, Bijna 8 op de 10 gemeenten verwacht een tekort over 2021 (“Nearly 8 out of 10 municipalities expect a shortage in 2021”), 14 January 2021 (<https://vng.nl/nieuw-s/bijna-8-op-de-10-gemeenten-verwacht-een-tekort-over-2021>).

¹⁰ The Ministry of the Interior is aiming for a reassessment of the municipal fund by 2023, but the formation of a new cabinet could (again) lead to delays; see *Formatie: Kans Op Uitstel Herijking Gemeentefonds, Binnenlands Bestuur* 8 January 2021 (<https://www.binnenlandsbestuur.nl/financien/nieuw-s/formatie-kans-op-uitstel-herijking-gemeentefonds.15691788.lynkx>).

(without the latter being a member of this body). Provincial councils consist of directly elected representatives. Just as the municipal executive administers the municipality, the provincial executive administers the province. King's Commissioners are the government's representative at provincial level and are appointed by royal decree for a term of 6 years.

36. The Netherlands also has water boards (*waterschappen*) which are public entities with the same status as provinces and municipalities, but with specific responsibility for water-related affairs in a specific geographical area.¹¹ The 22 water authorities manage natural water systems and protect residents from flooding. Their experts keep dikes safe and ensure the supply of clean water. A water authority is administered by an executive board, which is appointed by a directly elected general council. Both bodies are chaired by the same person, known as a *dijkgraaf*.

37. At central government level, the Ministry of the Interior and Kingdom Relations (BZK), one of the eleven ministries of Dutch central government, is in charge of decentralisation reforms, multi-level and public-private cooperation and support to the municipalities. It formulates policy, prepares legislation and regulations, and is also responsible for coordination, supervision and policy implementation. The Ministry deals with the following issues:

- democracy and the rule of law;
- public administration;
- the quality of personnel and management within central government;
- the Dutch constitution and the system of constitutional government;
- the partnership with Curaçao, St Maarten and Aruba;
- public housing and government buildings.

38. The main development since the last monitoring visit in the Netherlands in 2013 is the entry into force of a major decentralisation reform, particularly in the social domain. Since 2015, municipalities have been responsible for youth care, work and income and care for the long-term sick and the elderly, but further tasks have been decentralised, among others nature management and spatial planning. By consequence, this decentralisation resulted in a reorganisation of municipalities and the emergence of regional partnerships. The decentralisation had the ambitious objective to save costs and improve the quality of services at the same time. The transfer of funds for the new tasks is widely considered as not sufficient, which has led to large financial problems ("decentralisation of austerity").

39. A major re-organisation of the public security sector, initiated by the national legislator in 2012, has taken away powers from the municipalities merging the municipal police forces and the regional districts of the state police into 25 regional forces and the creation of a national police force. The lack of democratic control of these regions (which, for instance, were responsible for Covid-measures), is reason for concern. In parallel, a re-organisation or regionalisation "bottom-up" is visible in other domains, after the decentralisation of tasks to the local level, due to voluntary intermunicipal cooperation in "regional" structures: the Netherlands now knows over 30 regions in fields such as the labour market, youth care, psychological care and energy transition.¹²

40. Further legislative proposals have directly affected local and regional authorities. These include the de-constitutionalisation of the appointment of the King's Commissioner and the Mayor and the constitutional basis for the Caribbean public entities. In 2019, the Senate has rejected the Act on the broadening of the power to grant exemption from the resident requirement for aldermen and commissioners, due to the fear of a lack of local or regional ties of the office holders.

41. The effects of the latest decentralisations on the functioning of the parliamentary system and parliamentary democracy have been examined, among other issues, by the State Commission on the Parliamentary System (*Staatscommissie Parlementair Stelsel*), established at the request of the Senate and the House of Representatives. In its report of December 2018, the *Staatscommissie* has advised to adopt legislation in order to provide a basis for a better balance in the administrative and financial relations between central government, provinces and municipalities, and proposed a Constitutional Court with the power to issue binding rulings on, among others, the delimitation of competence between levels of governance, due to the lack of an existing provision for these types of disputes.

42. The central government has, in response, initiated a proposal for a constitutional amendment (35,532) regarding the election, structure and composition of the Senate. Since the electoral system for the Senate is

11 (<https://barometre-reformes.eu/en/netherlands/>).

12 An interactive database which shows the respective regions according to the decentralized tasks exercised in intermunicipal cooperation can be found here: RegioAtlas (https://www.regioatlas.nl/kaarten/nieuw/nieuw_regiokaart#wizard).

based on indirect election via the provinces, this proposal also affects provinces. However, it has been put on hold for the time being, as a consequence of the cabinet's current caretaker status.

2.2 Status of the capital city

43. Since the 1983 revision of the Constitution of the Netherlands, Article 32 mentions that "the King shall be sworn in and inaugurated as soon as possible in the capital city, Amsterdam". It is the only reference in the Constitution stating that Amsterdam is the capital and there is no legal foundation or consequence from the status as State capital. Amsterdam became the capital around 1800, when Louis Napoleon became King in the Dutch territories. In 1814, Amsterdam was named capital in the newly made Constitution. Nevertheless, in 1815, as a result of the reunification with the Southern part of the Netherlands, it lost its constitutional status, but remained the capital. The importance of the capital is thus more historical, social, cultural and economic than legal.

44. Amsterdam is the most populous city of the Netherlands with a population of 872,680 within the city proper,¹³ 1,558,755 in the urban area and 2,480,394 in the metropolitan area. It is also a major North Sea port (Europe's 5th largest port – however, Rotterdam, Europe's largest seaport, is larger, by far), EU financial centre and a centre for the arts and creative and innovative (digital) industries. In 2019, Amsterdam was the municipality with the highest tourist tax revenues in the Netherlands. It is considered one of the most multicultural cities in the world, with at least 180 nationalities represented.¹⁴

45. Regarding its internal structure, Amsterdam has a long tradition of sub-municipal districts for governing the city (*stadsdelen*). There are seven districts – West, Noord, Oost, Zuidoost, Centrum, Zuid and Nieuw-West – with limited independent powers, own budgets and own civil servants as well as decentralised offices (*Stadsdeelkantoren*).¹⁵ The city districts do no longer have extensive powers nor elected officials. In fact, in 2013, a revision of the Municipalities Act was adopted abolishing sub-municipalities as a form of government. Although the Amsterdam district councils have therefore ceased to exist, they were replaced by smaller, but still directly elected district committees (*bestuurscommissies* – executive committees). Districts are responsible for carrying out municipal tasks, such as work in public spaces and cleaning; they are further subdivided in 26 Neighbourhoods. They also foster a place-based approach by developing plans for neighbourhoods with the local community as well as subsidize social initiatives from civil society.

46. Amsterdam is part of the Metropolitan Region Amsterdam (MRA, known in Dutch as *Metropoolregio Amsterdam*) which comprises 32 municipalities, two provinces (North Holland and Flevoland) and the Transport Authority Amsterdam in an informal cooperation (the MRA does not have official legal status). The overall ambition – working to become an international top region with a high quality of life by investing in a future-proof and well-balanced metropolis – has been translated into four administrative tasks: (1.) Further strengthen the partnership. (2.) Pursue a resilient, inclusive and 'green' MRA economy. (3.) Build with housing needs in mind and strengthen the quality of life of the entire region through growth. (4.) Accelerate the establishment of the metropolitan mobility system.¹⁶

47. Together with the other three biggest cities in the Netherlands (Utrecht, Rotterdam and The Hague), Amsterdam is also part of the "G4" alliance, an alliance for mutual cooperation and furthering mutual interests. Due to the small size of the Dutch territory, multiple midsize cities are close together and often mentioned as "*Randstad*". In the *Randstad* live about 7 million people on an area of 4,300 m². The *Randstad* consisting of the four largest cities of the Netherlands is ranked third, after London and Paris in terms of quantitative metropolitan functions. Not one dominant city, but a Dutch polycentric region.¹⁷

48. The seat of government and Parliament as well as of the Supreme Court and of the Council of State is The Hague, situated some 40 km to the South of Amsterdam, which – a result of turbulent events in Dutch history – has always been a residence of the head of state since the 11th and 12th centuries. With a metropolitan population of more than 1 million, it is the third-largest city in the Netherlands, after Amsterdam and Rotterdam; the city itself counts 546.335 inhabitants (2020).¹⁸ The Hague does not enjoy any special administrative status from its position as the seat of government (or the capital of the Province of South Holland), although it has to bear the additional burden of, for instance, most national demonstrations and protests taking place in the city. In addition, The Hague is known as the home of international law and

13 See (<https://opendata.cbs.nl/statline/#/CBS/nl/dataset/37230ned/table?ts=1578685738191>).

14 According to the City Administration (<https://www.amsterdam.com/en/living/about-amsterdam/people-culture/diversity>).

15 See (<https://www.amsterdam.nl/en/districts/>).

16 Find more information at (<https://www.metropoolregioamsterdam.nl/about-mra/>).

17 W.J.J.C. (Wessel) van Wijlick, The Dutch G5 Network towards a new spatial economic model for the Dutch polycentric network Urban Design Graduation Project, Eindhoven, University of Technology, February 2, 2017 (https://pure.tue.nl/ws/files/58777534/Wijlick_v_0734976.pdf).

18 The official website of the city contains a section "Statistics on The Hague" (<https://www.denhaag.nl/en.htm>).

arbitration: approximately 200 other international governmental organizations are located in the city, among them The International Court of Justice, as well as the International Criminal Court, the Permanent Court of Arbitration, and Europol.

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

49. The Netherlands is a founding member of both, the Council of Europe (since 5 May 1949) and of the European Communities/Union (since 1 January 1958).

50. The European Charter of Local Self-Government (ECLSG) has been in force in the Netherlands since 1 July 1991; the Protocol has been ratified on 13 December 2010 (it entered into force on 1 June 2012). The following declarations have been made upon ratification: The Kingdom of the Netherlands declares in accordance with Article 13 of the Charter that it intends to confine the scope of the Charter to provinces and municipalities.

51. With regard to Article 6, paragraph 2, of the Charter, the Government of the Kingdom of the Netherlands takes the view that, in the framework of the Charter, only Article 9 of the Charter has any bearing on the financial resources of local authorities. This means that local authorities may not take any financial claims on central government based on the provisions of Article 6, paragraph 2, of the Charter. In the opinion of the Government of the Kingdom of the Netherlands, Dutch legislation is in accord with both the wording and the purport of Article 6, paragraph 2, of the Charter.

52. The Kingdom of the Netherlands declares in accordance with Article 12, paragraph 2, of the Charter, that it shall not consider itself bound by the provisions of Article 7, paragraph 2, Article 8, paragraph 2, Article 9, paragraph 5, and Article 11 of the Charter.¹⁹

2.4 Previous Congress reports and recommendations

53. The first monitoring visit regarding the situation of local and regional democracy in the Netherlands took place in 1999 and resulted in the adoption of Recommendation 55 (1999) and Resolution 77 (1999). The monitoring report focused on six points: (1) the appointment of mayors; (2) the management of large cities; (3) intermediate authorities; (4) supervising local authorities; (5) reservations concerning the European Charter of Local Self-Government, and (6) local finances. Besides these main points, the report also discussed the integration of foreign nationals, the role of minority languages and planning.

54. A second monitoring procedure took place in 2005, which mainly focused on two issues: the appointment of Dutch mayors and local finances (dated 3 May 2005, doc CG(12)16) and resulted in the adoption of the Recommendation 180 (2005)[5] on the state of local finances in the Netherlands.

55. A third monitoring visit took place in 2013, which mainly concentrated on the following issues: the “dualisation reform” and the modification of the Municipalities Act; the relationship between central and local authorities; the non-recognition of the principle of local self-government in the Constitution or relevant legislation; the delimitation of competences of municipalities and provinces, and the restrictions due to the *medebewind* co-governance system; the inadequate consultation mechanism; and the lack of financial resources coupled with a strong dependence on state transfers. It resulted in the adoption of the Recommendation 352 (2014) (dated 26 March 2014, doc CG(26)7FINAL).²⁰

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

3.1 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.

56. There is no express or direct recognition of the principle of local self-government in the legal framework of the Netherlands, neither in the Constitution nor in legislation. This has been noted already, with regret, in the Congress Recommendation 352(2014). The situation has not changed since then.

¹⁹ Declaration contained in a letter from the Permanent Representative, dated 20 March 1991, handed over to the Secretary General at the time of deposit of the instrument of acceptance on the same day - Or. Engl.

²⁰ https://rm.coe.int/local-and-regional-democracy-in-the-netherlands-recommendation-artur-t/168071a7f4#_ftn2

57. While the principle of local self-government is not explicitly referred to in the Constitution or in the Municipalities Act, it is implicitly mentioned in Article 124 para.1 of the Constitution that provides that “the powers of provinces and municipalities to regulate and administer their own internal affairs shall be delegated to their administrative organs”. This means that the Constitution recognizes provinces and municipalities as pre-existing entities and, at least indirectly, their power to regulate and administer their own internal affairs. And the principle is also definitely essential part of the Dutch culture and tradition of decentralised government. Every interlocutor stressed this.

58. However, the lack of a clear constitutional or legislative foundation bears risks for local powers to be limited by simple amendments of ordinary legislation. Without having to consider and respect a constitutional principle, the actual scope, degree and extension of local self-government in the Netherlands is entirely attributed to the discretion of the legislator. Also, decentralised authorities do not have a legal basis for challenging central government decisions regarding their autonomy (however, even if there were a constitutional foundation of local self-government, municipalities would still have no procedure for such challenges, as there is no Constitutional court in the Netherlands).

59. According to the Association of Municipalities (VNG), there has not been any progress in this area since the previous monitoring visit, apart from a proposal for an Act on local government, prepared by VNG. But any progress in this area will depend on the new government (to be formed after the March 2021 elections).

60. Thus, the rapporteurs reiterate the conclusion of the 2014 monitoring report²¹ (paragraph 53) which remains relevant: “In the light of the above considerations, the Rapporteurs consider it reasonable to support the view that, at present Dutch constitutional and statutory arrangements do not formally satisfy the requirements of Article 2 of the Charter and that a clearer statement in the Constitution and legislation would provide better protection for local authorities.”

3.2 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.

3.2.1 Article 3.1: Scope of local self-government

61. The scope of local self-government cannot be defined in an abstract manner. There are no standard or universal criteria for measuring whether “a substantial” share of public affairs” is regulated and managed by municipalities “under their own responsibility and in the interests of the local population”. Comparison with other countries is necessary as well as consideration of a wider context, including the historical evolution, the culture and the constitutional traditions of a given country.

62. In the Netherlands, municipalities have considerable powers and competences and fulfil a remarkable array of tasks and functions. Since 2015, the competences and tasks have been further enlarged by the decentralisation process. Municipalities are largely autonomous in their powers and have great discretion in carrying out their tasks. There is a general culture of decentralisation and pragmatism which favours autonomous management of local affairs and may even fill, to some extent, the gap of missing legal safeguards.

63. However, municipalities are very much dependent on financial transfers from the central government which, in many cases, also means policy-related involvement (see below, article 8). Furthermore, many tasks are performed through a co-governance system (*medebewind*). According to some interlocutors, the degree of self-government is thus relatively limited and increasingly challenged. There is preoccupation that the degree of discretion and autonomy of local authorities appears increasingly restricted due to a lack of financial resources and a financial dependency towards the national government.

64. The Rapporteurs conclude that the scope of local self-government in the Netherlands can currently be defined as “substantial”, consistent with the Dutch culture and traditions. However, recent developments

²¹ Idem.

(decentralisation) and the weakness of legal foundations open wide areas to political discretion and interference, which may endanger the municipalities' "own responsibility" for many of the public affairs they are currently entrusted with. Therefore, the requirements of Article 3 para.1 of the Charter appear satisfied by the present situation in the Netherlands, with regard to the "substantial share of public affairs", but attention needs to be paid to local autonomy in the management of these affairs.

3.2.2 Article 3.2: Municipal Councils and Mayors

65. As the representative body at municipal level and the highest authority in the municipality, the directly elected Municipal Council (*Gemeenteraad* or *Raad*) has formal authority over local democracy (Art.129 Const.); it is chaired by the Mayor who shall guarantee procedural correctness. The implementation of policy is managed by the municipality's executive: the Board of the Mayor and the Aldermen (*College van Burgemeester en Wethouders*) and the Mayor (*Burgemeester*); the Mayor chairs the Board of the Aldermen (Art. 34 Municipalities Act). The Aldermen are elected Councillors who cease in their function in the very moment they are elected to become part of the executive (articles 35 and 36b Municipalities Act; appointments from outside the council are also possible). This is the result of the "dualisation reform" of 2002, which stressed the separation of functions and responsibilities between Board and Council. The Council can ask an Alderman to resign and even express a non-confidence vote with regard to Aldermen (art. 49 Municipalities Act). Regarding Council and Aldermen, the requirements of democratic election and responsibility, respectively, laid down in article 3.2 of the Charter are therefore fulfilled.

NON - ELECTED MAYORS AND KING'S COMMISSIONERS IN THE NETHERLANDS:

66. By contrast, Mayors (and King Commissioners, see below) are not elected in the Netherlands and have a special relationship with the Council, which deserves special consideration.

67. Since the amendments to the Municipalities Act in 2001, the municipal councils determine the selection of the new mayor. A vacancy notice is published identifying the desired profile for Mayor, and applicants can compete for the position (art. 61 Municipalities Act). In formal terms, the appointment is made by Royal Decree (and through a recommendation by the Minister of Interior); in practice, the Mayor is appointed from among candidates "selected" or "identified" by (a selection committee within) the Municipal Council.²² Those indications by the Municipal Council are nearly always respected and reflected in the ministerial recommendation for the Royal Decree. This "selection, not election", as one interlocutor put it, has proved to be an effective system, according to the assessment by most interlocutors; however, it may raise issues of transparency.

68. Both, Mayors and King's Commissioners (for the latter basically the same procedure applies), are usually characterised – and perceive themselves – as civil servants or 'non-partisan governors' rather than politicians: in fact, candidates do not need to engage in an electoral campaign but are selected based upon their professional qualification; however, only 3% of incumbent Mayors do not have a political background. But it appears that party politics, in general, does not play a major role in the practice of the appointment procedure.

69. In the case of a Mayor losing the confidence of the Municipal Council during the mandate, he/she resigns and if this does not happen, the council may request the King's Commissioner to raise the issue of dismissal through state decision. For the confirmation of a Mayor's (or King's Commissioner's) second mandate, again, a decision by the Municipal Council (or Provincial Council, respectively) is needed, before the Minister's proposal for confirmation by Royal Decree. So, the elected Council controls selection and resignation as well as confirmation of the Mayor (or, similarly, of the King's Commissioner), at least in substantial terms.

70. The issue of the appointment of Dutch mayors (as well as King's Commissioners) is recurrent for the Netherlands and was discussed in depth and flagged as problematic in all previous Congress monitoring reports and recommendations (see 2005 Monitoring Report, part II, paragraphs 11-27, and 2014 Monitoring Report, paragraphs 59-65). Some Congress delegations also referred to this issue within the Congress' activities.

71. The question remains whether the traditional Dutch arrangement for the appointment of mayors complies with the letter and spirit of Article 3.2 of the Charter, which requires that local government "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". Can a

²² <https://www.politiekeamtsdragers.nl/ambt-in-praktijk/benoemingen/burgemeesters> (in Dutch).

<https://www.government.nl/topics/municipalities/mayors/selection-appointment-dismissal-and-resignation>

regular Dutch mayor as “executive organ” (under Article 3.2) be considered responsible to the Municipal council, which means not only that the mayor has to inform and “respond” for his/her management to the council, but that the council can dismiss the mayor and end the term of office in case of loss of confidence or bad political communication.

72. According to the findings in the 2014 Monitoring Report (paragraph 62 and 63), “under the Municipalities Act, it is evident that there is a clear relation of “dependence” of mayors with respect to councils”, which “can be seen in different aspects of their mandate, and even for what concerns their continuance in office”, e.g. the Council’s decision upon the Mayor’s remuneration (art. 66.1), the enactment of a Code of Conduct for the Mayor (art. 69.2), and the decision upon lifting the residency-requirement of the Mayor (art. 71.2). But above all, the Council can terminate the duties of the Mayor and decide not to grant a second mandate “if a seriously impaired relationship should exist between the mayor and the council” (art. 61b.2 Municipalities Act); in this case, the Council sends a recommendation through intervention by the King’s Commissioner to the Minister, which is usually followed. At least in substantial terms, this can be considered “responsibility”.

73. Thus, the removal of the Mayor is possible in two cases, both are in the hands of the Council: The municipal council can express a non-confidence vote any time which, according to all interlocutors, will lead to the dismissal by the Mayor – perhaps after a mediation attempt by the King’s Commissioner. And after the first term of six years, the Mayor needs the Council’s vote for re-appointment. This gives the Council a strong power vis-à-vis the Mayor. But it also raises the question of the latter’s neutrality, as the Mayor is dependent on the Council for being re-appointed and at the same time responsible for checking and safeguarding the integrity of Council members, and in case starting an investigation against some of them.

74. Constitutional changes require two rounds of approvals in both chambers of Parliament, one before the second chamber elections, the second after those. In that second vote a two-thirds majority is an additional requirement. In this case, the first vote was in 2015. The election of the second chamber was organised in 2017 and in November 2018, the Senate voted with a two-thirds majority in favour of a constitutional amendment, according to which mayors shall be appointed, suspended and dismissed in a manner to be determined by Act of Parliament.²³ After two approvals in the amendment procedure, the constitutional change is final and the constitutional obstacle for change removed. Article 131 of the Constitution nowadays reads as follows: “The King’s Commissioners and the Mayors shall be appointed, suspended and dismissed in a manner to be determined by Act of Parliament. Pursuant to Act of Parliament, further rules may be laid down on the procedures to be followed.”²⁴

75. Following its de-constitutionalising, the appointment procedure of Mayors and King’s Commissioners may now be changed by the ordinary legislator with a simple majority (Municipalities Act). But the change is controversial and meets reluctance. The current system is widely seen as reasonable and in line with Dutch culture and traditions. Opinions go across party affiliations. The present government did not address the matter actively during the past 4 years and the House of Representatives has not proposed a change of the appointment procedure either (after the constitutional amendment). Thus, the effective legislative change of the appointment procedure is left for debate under a new government, after the March 2021 elections.

76. In addition, the method of appointment of the mayor cannot be addressed as an isolated issue, as it has consequences for the balance of power in the entire local system. According to many interlocutors, the current appointment procedure, as well as the role and position of the mayor, function quite well and lead to satisfactory results as part of the peculiar checks and balances of the Dutch democratic system. There is therefore no surprise that many Mayors and local associations did not support de-constitutionalisation:²⁵ in an open letter, 31 Mayors of larger cities asked the Senate not to remove the mayoral appointment from the Constitution and to maintain the procedure as it stands. A standard argument is the neutrality of the Mayor’s (and King’s Commissioner’s) role: “above the parties” and linked to the objective guarantee of compliance with law. Another argument are the mayor’s powers in the area of public order, safety and police. But exactly the latter show that the mayor’s role is far from being apolitical. This is currently illustrated by the power of adopting restrictions to fundamental rights for combating the pandemic as well as by contrasts regarding the treatment of irregular migrants (with some mayors actively opposing the restrictive policies of the central government with local counter-action, such as granting shelter etc.).

77. During the debate on the amendment of the Constitution, the Senate declared by motion that for a possible new method of appointment of mayors, a form should be chosen that respects the council as head

²³ Dutch News NL 20 Nov 2018 (<https://www.dutchnews.nl/news/2018/11/senate-opens-door-to-elected-mayors-d66-celebrate-win/>). (<https://alexandervanloon.nl/english/?p=2443>)

²⁴ See (https://www.government.nl/binaries/government/documents/reports/2019/02/28/the-constitution-of-the-kingdom-of-the-netherlands/WEB_119406_Grondwet_Koninkrijk_ENG.pdf).

²⁵ <https://nltimes.nl/2018/11/06/31-mayors-call-dutch-senate-keep-mayoral-appointment-procedure>

of the municipality and that contains guarantees for an independent position of the mayor with an independent package of tasks and powers in the field of public order and safety, a task to promote the integrity of the municipal authority and a position as administrator of all citizens, above the parties.²⁶ The government has embraced this motion.²⁷ However, this will hardly be possible. In fact, it is difficult to imagine a change of the appointment procedure without dramatically changing the system of local governance as a whole. Today, the *real* and *political* government of each municipality is the Board of Aldermen which is usually a coalition based upon a programmatic agreement. But this would need to change in case of a stronger, political legitimacy of the Mayor. Thus, the consequences of such a change will need intense public debate as well as thorough and prior assessment, which has not been adequately carried out, so far.

78. Considering the whole situation, the rapporteurs note with satisfaction that constitutional amendments have been adopted in order to de-constitutionalize the appointment procedure which has opened the way for the legislator to regulate and eventually change the procedure. In conformity with Art. 3.2 of the Charter, the right to local self-government is exercised by councils elected democratically. The second requirement, i.e. "executive organs responsible to them" is fully satisfied with regard to the Board of Aldermen who are elected and depend on the confidence of the Council. But according to the Municipal Act (art. 34.1), the municipal executive is composed of the Board and of the Mayor. Despite its form, the peculiar relation between Council and appointed Mayors (and King's Commissioners) comes close to responsibility of the Mayor vis-à-vis the Council, at least in substance. This has resulted from the analysis of its main elements (selection, call for resignation and need for confirmation by the council). Thus, the rapporteurs do not see it in fundamental contrast with Art. 3.2 of the Charter but recommend continuing the debate on the role and appointment of Mayors (and King's Commissioners), in the debate on reform options.

79. Beyond formal compliance: an additional note on appointed Mayors and democratic standards: Although under Article 3.2., the absence of a violation of the Charter has been found, it should be remembered that the problem of appointed mayors goes deeper and therefore beyond the formal respect of the text of the Charter. In fact, the democratic election of mayors is an important cornerstone of democratic legitimacy of the system of local self-government. Closely connected with the citizens' rights of participation in local public affairs, it is an essential element of democratic standards of the whole democratic system of which local self-government is part. The Congress has always defended these standards and consequently expressed its concerns regarding the situation in some other countries that do not comply with the guarantee of democratically elected mayors²⁸. The fact that the Dutch situation has been judged in compliance with Article 3.2 of the Charter is due to the change in substance, with the continuously growing role of the council in the appointment (and withdrawal) procedure, as well to the de-constitutionalisation of the appointment procedure which now allows for its comprehensive reform. It cannot be overlooked, however, that currently no mayor (or King's Commissioner) needs to engage with citizens and voters as a candidate in an electoral campaign, which is the first step in a democratic relationship between voters and mayor. Thus, a reform establishing a democratic relationship also in the formal sense needs to remain the final goal in the transformation of the procedure.

3.3 Article 4: Scope of local self-government

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| <ol style="list-style-type: none"> 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. |
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²⁶ Parliamentary Documents I 2018/19, 34 716, no. I (motion by member Rombouts c.s.).

²⁷ Parliamentary Documents I 2018/19, 34 716, no. K.

²⁸ Congress, Resolution 300(2010), Municipal elections in Azerbaijan (23 December 2009) and Local and regional democracy in Azerbaijan, Recommendation 326 (2012), Congress, Fact-finding mission on the situation of local elected representatives in Turkey, CG32(2017)13final, 29 March 2017, and European Commission for Democracy Through Law (Venice Commission), Turkey. Opinion on the replacement of elected candidates and mayors, Opinion no. 979/2019 Strasbourg, 18 June 2020 CDL-PI(2020)011 Or. Engl. Where ongoing effects of the previous emergency regime gave rise to serious concerns (par. 73).

3.3.1 *Article 4.1: Powers and responsibilities*

80. Municipalities have a general competence called "open household", which is constitutionally protected (Art. 124, Constitution). According to the Municipality Act municipalities can, within their boundaries, adopt their own bye-laws, levy taxes and develop their own policies on any policy area, as long as it does not conflict with "higher law". Municipalities fulfil a wide range of tasks and functions among which, not least, important tasks for implementing climate policies. More in detail, municipalities are responsible for the following tasks:²⁹

- Spatial planning and urban development: the municipalities draw up land-use plans for land within the municipalities and give planning permission.
- Housing: the municipalities draw up social housing policies in consultation with housing associations and manage land belonging to the community.
- Public order and safety: the mayors are responsible for public order in the municipalities and have a close working relationship with the police forces. They also issue official documents such as passports, identity documents and driving licences.
- Culture and recreation: the municipalities take part in the promotion of tourism and maintain cultural facilities.
- Public works and transport: the municipalities are responsible for the development and maintenance of municipal streets and roads, traffic and parking regulations, provision of public transport and school buses.
- Public health: each municipality has a public health and hygiene department, and the municipalities are responsible for the vaccination of children.
- Education: the municipalities manage public primary schools and subsidize all the expenses of private primary schools in their areas.
- Employment: the municipalities are responsible for reintegrating unemployed people back into the labour market and provide for training.
- Welfare: the municipalities are responsible for social welfare and measures to help the unemployed, people with disabilities and the elderly (this includes responsibilities for the Social Support Act 2015).
- Young people: the municipalities establish offices offering support to children and young people in line with the Youth Act 2015 and are responsible for the planning of institutions and programmes providing such support.

81. However, as has already been stated in the 2014 Monitoring Report (paragraph 66), "there is no comprehensive or codified set of competences for municipalities in the legal system of the Netherlands. The Municipalities Act does not contain such enumeration. The actual competences of municipalities in the different sectors of governmental action are identified by the applicable laws and regulations in each of those sectors. Therefore, there is no "hard core" of essential or "inherent" competences for municipalities whatsoever. Accordingly, the competences granted to local authorities in the different sectors of governmental activity may be widened or reduced by the State legislature. This assessment is still valid, although, in practice, there is a clear distribution of competences and powers. Where it is not, in practice, the specific problem is addressed and solved in a cooperative manner, according to interlocutors in the spirit of the "one government" philosophy.

82. The lack of clarity regarding competences has already been addressed by the previous Congress Recommendation 352(2014). According to the VNG, confirmed by other interlocutors during the meetings, there has been no progress regarding the clarification of the areas of competence of municipal and provincial authorities, including those set out in the different sectors of government activity, in line with the spirit of Article 4.1 of the Charter. Thus, the Rapporteurs conclude that the requirements of Article 4.1 of the Charter are only partially satisfied and that a clearer legal entrenchment of the competences in the legislation would be desirable in order to provide better clarity and protection for local authorities.

3.3.2 *Article 4.2: Full discretion*

83. According to the Constitution and the Municipalities Act the municipal councils make their own regulations concerning their own local affairs (Art. 127 Const. and 147 and 149 Municipalities Act). These regulations are called General Local Regulations (abbreviated: APV). They contain numerous provisions, especially those on public order and safety. The Association of Dutch Municipalities (VNG) has elaborated a model APV that individual municipalities can use with all the amendments they consider necessary in their respective local situations. While the APV is based on the autonomous competency of a municipality, each municipality can also issue local regulations on specific topics legally based on their delegated competencies

²⁹ See, for a comparison of provincial and municipal tasks, also World Observatory on Subnational Government Finance and Investment (OECD), 02/2019 (<http://www.sng-wofi.org/country-profiles/Fiche%20NETHERLANDS.pdf>).

or *medebewind*. These specific regulations concern all areas of local competences and therefore vary greatly.

84. Due to the nature of legislation, municipalities have a lot of room for manoeuvre, but responsibility for inflow from other domains (medical and education) into the youth care system has not been accompanied by own funding sources or a sound financial safety net. This means that the preconditions for municipalities to be able to fulfil their increased responsibilities have not grown in parallel. Interim unfirm measures as a result of court rulings and national interventions have even reduced the room for manoeuvre for municipalities.

85. Thus, the Rapporteurs conclude that the requirements of Article 4.2 of the Charter are generally satisfied.

3.3.3 Article 4.3: Subsidiarity

86. In order to substantiate the distribution of competences between the central government and the decentralised authorities and the principles on which it is based, the Royal Commission 'Parliamentary system' has recommended to clarify the main aspects of decentralisation. One of these is the principle of subsidiarity which is defined in the Municipalities Act (Art. 117.2, and in the Provinces Act): "2. Proposals for measures that treat certain matters as part of central government or provincial policy may be made only if the matter in question cannot be dealt with efficiently and effectively by the municipal authorities." The decision rests with the Minister (Art. 117.1: "1. Our Minister promotes decentralisation for the benefit of the municipalities").

87. The principle of subsidiarity is also applied in practice. Decentralisation in the social domain can be seen in close connection to the implementation of the principle. In fact, the most important objectives in this process were quality and social involvement. Therefore, in 2015, tasks on youth care were decentralized and assigned to the municipalities, together with tasks in the field of care (*Social Support Act*). In addition, tasks related to work and social security were merged (*Participation Act*). With their knowledge of the specific local situation, municipalities are certainly best equipped to organise the right care in the right place. But for doing so, they need a structurally adequate budget and the right competences. In order to fulfil those tasks, the general grant which municipalities receive from the Municipalities Fund has been increased by one-third (according to the information provided by the Ministry of Interior). However, although decentralisation as such was generally not put in question, many interlocutors complained about the administrative burden and about the lack of sufficient funding for the additional responsibility. In particular, elements from other domains (health and education), which are part of the youth care system, have not been compensated by additional own sources of income or transfers.³⁰

88. While the care for vulnerable youth and decentralisation of other social services are certainly important examples for subsidiarity (and in principle welcomed by the municipalities), it appears that decentralisation still is a huge challenge for municipalities which have to cope with the resulting financial difficulties and the risk of a reduced sphere of autonomous decisions. The Rapporteurs conclude that the requirements of Article 4.3 of the Charter are generally satisfied, as the principle of subsidiarity is laid down in legislation, part of the tradition and also implemented (although upon decision by the central government).

3.3.4 Article 4.4: Full and exclusive powers and their limits

89. A Dutch peculiarity, the "*Medebewind*" system of co-governance of competences, similar to delegated competences in addition to "own" or "autonomous" local competences has been addressed extensively in the 2014 Monitoring Report. The *Medebewind* system is based upon Article 124 para.2 of the Constitution according to which local authorities may be required by an Act of Parliament or by public authorities of a higher public body "to provide regulation and administration". In these cases, a municipality's autonomy and decision-making capacity is limited compared to "autonomous" competences and it is obliged to provide a given service or implement a certain competence following and respecting the regulations by the central government. The Constitution also provides for specific rules "in the event of non-compliance in matters of regulation and administration required under art. 124, paragraph 2".

90. According to Congress Recommendation 352(2014) the *Medebewind* co-governance mechanism reduces the municipalities' autonomy of action and of decision-making, which is why "autonomous" and "proper" competences should be reinforced and the tasks performed under the *Medebewind* procedure

³⁰ In 2020, the VNG concluded that the results in practice lag behind the expectations as the transformation to integrated care at the local level is still hampered by financial shortages and limited understanding of the potential of the new possibilities.

reduced. According to the interlocutors, this has not happened since although the mentioned decentralisation process (2015) resulted in the transfer of large responsibilities to municipalities in the social sector (youth support services, social support (to people with disabilities) and offering help with work and income). Social services are now provided closer to the citizens and generally with more policy freedom at the municipal level. In fact, decentralisation shall leave more room and discretion for local decision makers in order to adapt services best to the local situation and needs. However, the mentioned difficulties (see above 3.3.3., article 4.3), seem to contradict the good intention in practice, at least for many municipalities.

91. The rapporteurs conclude that the requirements of Article 4.4 of the Charter are generally satisfied, as the powers of local government are normally full and exclusive and limitations as well as the obligation to perform certain tasks is provided in legislation. Over time, co-governance has evolved into decentralisation, which is increasingly used and, in theory, should permit wider autonomy in carrying out tasks. The practice is, however, often different, and risks to limit local autonomy.

3.3.5 *Article 4.5: Discretion in exercise of delegated powers*

92. According to Art. 4.5 of the Charter the exercise of delegated powers by local authorities shall be “insofar as possible” managed with “discretion in adapting their exercise to local conditions”.

93. It appears that a wider shift from co-administration to intergovernmental co-operation has taken place over the last years. In the past, municipalities merely implemented the policy of the central government as established in more or less detailed administrative agreements. The increasing complexity of tasks and mutual dependencies, in particular regarding major social tasks, was taken into account by the Intergovernmental Programme (IGP). The IGP was signed in 2018 by the central government and the organisations representing municipalities, provinces and water boards. The programmatic approach shall permit equal programmatic cooperation between governments based upon equality and a clear division of roles according to the functions of each level. It is based on the following political principles: (a) acting collectively on the basis of social challenges rather than on the national government’s coalition agreement; (b) a single integrated joint programmatic approach instead of sectoral agreements; (c) a transparent cooperation process; (d) focus on implementation of social tasks in an equal partnership.

94. However, according to an evaluation after the first year (in the autumn of 2019) various problems have emerged: Above all, Ministries still cling too much to the coalition agreement rather than acting in the logic of ‘joint tasks’. In their financial relations, local authorities are too dependent on central government, receiving the vast majority of resources through the municipal and provincial funds respectively (although these are general grants, not earmarked for certain tasks). In addition, the scope of financial arrangements such as “regional envelopes” (for intermunicipal cooperation in a certain area) is determined by the central government. This financial dependence appears to contradict the very notion of equality of partners in joint tasks. This is even more so in case of a crisis in which the national government tends to elaborate measures independently and only at a later stage involves the representative associations VNG, IPO and the Union of Water Boards (UWV) (the “nitrogen crisis” was mentioned as an example for this approach).

95. In order to improve intergovernmental relations through greater clarity and by providing a sound legal basis, the VNG has called for an Act on Decentralized Government as a specific legal framework compared to the existing general Inter-administrative Relations Code. It appears that work on such a code is already under way. In fact, a certain risk for local autonomy results from the predominantly political character of the intergovernmental programmes and agreements. The political strength of the “one government” approach may de facto reduce local autonomy through the sudden and sharp increase of tasks decided by the central government together with the amount of available financial resources. The more so, as there is no (legal) means for municipalities to check these decisions or to appeal against them. In practice, such changes will be negotiated politically – and agreed upon– by the central government and VNG.

96. Considering the current situation, discretion of municipalities in carrying out decentralized and delegated tasks seems generally respected, although the political character of decentralisation and the lack of legal safeguards adds to the preoccupations for a reduction of local autonomy. The rapporteurs conclude however that the requirements of article 4.5 of the Charter are generally satisfied.

3.3.6 *Article 4.6: consultation*

97. Art. 4.6 of the Charter requires consultation of local authorities “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.” In a similar formulation, the Municipalities Act, the Province Act and the Intergovernmental Relations Code all stipulate that municipal and provincial government has to be “informed and consulted in good time”

about new legislation and policies that concern the respective government. The Code on Intergovernmental Relations specifies the relationship between different levels of administration and contains a checklist on how to involve the Association of Dutch Municipalities (VNG) and the Association of Provincial Authorities (IPO) in policy making and the formulation of laws.³¹

98. The Ministry of the Interior and Kingdom Relations consults their representative organisations on legislative drafts concerning local and regional authorities, including legislative proposals initiated by other ministries. Legislative proposals are submitted to the VNG and the IPO before they reach the chambers of Parliament, which gives them the opportunity to express an opinion and to suggest changes. The Ministry stresses the importance of these consultation mechanisms in the early phase. In its advisory opinion on the legislative draft, the Council of State assesses if local authorities have been adequately consulted and if their response has been considered in the proposal. Consequently, the opinion of the consulted associations is taken into account in the final legislative proposal to be discussed in Parliament. The Ministry follows the same consultation procedure with regard to other proposed regulations (general measures of administration, ministerial regulations) that affect the local or regional government or require regulation or administration by local and regional authorities.

99. In addition, the central government holds regular meetings with local and provincial authorities to discuss the shape, progress, and financial consequences of decentralisation. The VNG and the IPO are represented at national level in the interdepartmental working groups on various policy domains on European issues and the 'Working Group for the Assessment of New Commission Proposals' (*Werkgroep Beoordeling Nieuwe Commissievoorstellen*).

100. An Administration Agreement is concluded between the local and provincial authorities and every new central government, after taking up office. It establishes the policy divisions between the levels of government for the upcoming four years. This agreement on principles is not legally binding but outlines the broad strategic goals for the coming years. Some interlocutors stated that in order to guarantee the feasibility of policy decisions, it is necessary to broaden the current practice of implementation tests for policy plans of central government that lead to a change in the tasks of local authorities. In particular, the expected effectiveness of policy should be more prominent in the motivation of the decision and before, in the consultation phase.

101. Inter-administrative relations receive great political attention in the Netherlands. There is monitoring of these relations by the consultative division of the Council of State (*Raad van State*), which periodically produces a report at the request of the government (section 15, of the Council of State Act) presenting a general description of the inter-administrative relations, which is illustrated by specific examples, and provides recommendations and remarks. The Council of State does so independently. It is the government's duty to inform Parliament about the recommendations made in the Council's report.

102. It appears that also the Provinces consult the municipalities extensively and intensively on all matters directly concerning local government. Although, there are no legally defined consultation mechanisms, the influence of municipalities on provincial policy-decisions appears as substantial and effective.

103. An important institutional link between the central level (Parliament) and local and provincial authorities is provided by the Senate, whose members are elected by the Provincial Councils along party lines.

104. The Senate informed the Congress delegation about a number of structural activities with the provincial and municipal levels, the water boards and the Caribbean public entities Bonaire, Sint Eustatius and Saba. A delegation of members of the Senate and the House of Representatives visits all islands per session year, usually following an Inter-Parliamentary Kingdom Consultation (IPKO) with the delegations of the Parliaments of the countries of the Kingdom (Aruba, Curaçao and Sint Maarten). Occasionally, the Senate also receives representatives from the islands when they are in the Netherlands.

105. All provinces are invited during a parliamentary term to discuss various current topics in and with the Senate. During the information visits, the themes are introduced by the provinces, followed by a debate with the senators; due to the corona pandemic, no province visit took place in 2020. The Association of Netherlands Municipalities (VNG), the Interprovincial Consultation (IPO), the Union of Water Boards (UWV) and the Council for Public Administration are regularly involved with their positions in the discussion of legislation, often by invitation as experts in expert hearings. During the debates on the de-constitutionalisation of the appointment procedures of King's Commissioners and Mayors, the Circle of King's Commissioners

³¹ Code on Intergovernmental Relations (*Code Interbestuurlijke Verhoudingen*), 2005, p.42 (<http://www.vng.nl/Documenten/Extranet/Bjz/Bb/civBZKNedcompleet.pdf>).

and the Netherlands Society of Mayors were also heard as experts. The Senate receives petitions from citizens which include those concerning municipal re-organisations.

106. The Rapporteurs are quite impressed by the range of different consultation activities and inter-administrative agreements as well as by the monitoring of these activities through the Council of State. Despite some of these activities not being regulated in legislation, the requirements of Article 4.6 appear overall satisfied.

3.4 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.

107. As a rule, municipal boundaries can only be changed by an Act of Parliament, upon initiative of the local bodies concerned (Article 123 para.2 Const.). The Municipalities Act does not include provisions on the matter. A specific piece of legislation, the “*Wet algemene regels herindeling*” (Wet Arhi, General rules on reclassification)³² provides that municipal boundaries can change whenever a new municipality is established or suppressed, when two or more municipalities merge, or whenever a territorial modification concerns at least 10% of the local population. It also contains the rules on the election of new representative bodies and for the situation of local authorities’ staff of the municipalities concerned.

108. Today, the municipal average size is large, especially compared to the OECD or EU average (respectively 9.700 and 5.900 inhabitants in 2017) as well as the median size (26 500 inhabitants). Only 2% of municipalities have less than 5.000 inhabitants (vs 44% on average in the OECD).³³ Over the years, a continuous process of municipal mergers has led to a gradual but significant drop in the number of municipalities, from 913 in 1970, to 443 in 2007, 380 in January 2018 and 355 in January 2019, after several mergers of municipalities in the North and West of the Netherlands at the end of 2018. By contrast with the past, when it was argued that large municipalities always needed more space, for example for housing, and therefore merged with smaller surrounding municipalities, nowadays the reasons for this trend are the transfer of certain tasks and powers to the municipalities in the context of the decentralisation process and the necessary efficiency and governance structures of larger municipalities to cope with that process. However, no scientific studies have been indicated as evidence for this.

109. In March 2019, a new “Policy Framework for Municipal Revision” was adopted to structure the process of municipal mergers. It states that mergers should preferably occur bottom up and contains guidelines against which the cabinet assesses and tests proposals for municipal and provincial reorganization. Thus, primarily municipalities should themselves decide whether to merge. Only in special cases, the province may initiate the process, e.g. if necessary due to regional developments or if the administrative power of one municipality is so much weakened that it is unable to perform its tasks. A case-by-case consideration based on local and regional circumstances, developments and context is required in which the following elements shall be assessed: (a) the support base; (b) the administrative power; (c) the internal cohesion and proximity to governance; (d) the regional cohesion. As any municipal re-organisation is a radical change for residents, but also for companies, institutions and the administrative environment of municipalities, the reclassification advice regarding the intended merger must include the opinion of these stakeholders. Usually, the municipality organises information meetings and participation evenings for stakeholders, after which the municipality or province draws up a reclassification design. Anyone can submit an opinion regarding this reclassification design (within 8 weeks). However, a referendum is neither prescribed nor held in practice.

110. The rapporteurs conclude that in the light of the legal guarantees and the above policy framework as well as of the current practice, the consultation requirements of Article 5 of the Charter can be considered as complied with, despite the fact that no referendum is foreseen on mergers.

3.5 Article 6: Appropriate administrative structures and resources

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.

³² See text (in Dutch): (<https://wetten.overheid.nl/BWBR0003718/2020-01-01>).

³³ World Observatory on Subnational Government Finance and Investment (OECD), 02/2019 (<http://www.sng-wofi.org/country-profiles/Fiche%20NETHERLANDS.pdf>).

3.5.1 Article 6.1

111. Municipalities enjoy a fair degree of autonomy in the field of internal organisation, guaranteed by Articles 124.1 and 128 of the Constitution. Within the limits of State legislation, the council and the executive board may decide to establish different committees (art. 82-94 Municipalities Act): council committees for preparing plenary decisions (art. 82), executive committees for managing delegated powers (art. 83) as well as “other” committees (art. 84).

112. Among the internal structures, district authorities, i.e. sub-municipalities, could be established with a municipal byelaw (art. 87 Municipalities Act). This option has been widely used: there is a network of 2.200 districts that are legal entities with council and executive organised according to public law (articles 87-92) or according to private law (as an association or foundation). Around half of Dutch municipalities have at least one village council or one community council. The main task of the district office is to make local government and its services more accessible to residents. For instance, The Hague has eight districts, each with its own district office and director. Each district reports to The Hague Municipal Executive concerning local district affairs. However, since 2014 the possibility to establish sub-municipalities with a municipal byelaw does not exist anymore (art. 87 Municipalities Act has been cancelled).

113. The municipal council is supported by a secretariat (“griffie”) according to its specific needs. More investment in these structures would be a possible way to guarantee logistical support as well as expertise in assisting councillors in their work. Auditing and the protection of fundamental rights are further functions which the municipalities need to guarantee, but where it has considerable autonomy in how to organize and discharge this mandatory function. Also, the mandatory local audit offices may fulfil additional tasks, provided that they would be sufficiently funded and staffed (which does not seem the case in many municipalities). Their activity and control could add to the accountability of municipalities and in particular of their executives.

114. According to the rapporteurs’ assessment, there is compliance with Art. 6.1 of the Charter.

3.5.2 Article 6.2

N.B. In their instrument of acceptance (1991), the Netherlands made a declaration that “it shall not consider itself bound by the provisions of Article 6 paragraph 2 of the Charter”.³⁴

115. Recruitment is decentralised. Municipalities have the power and the autonomy to autonomously recruit high quality staff on the basis of merit and competence. The Municipalities Act contains specific provisions for the municipal secretary appointed by the executive (Articles 100-106) and the municipal clerk appointed by the council (Articles 107-107e).

116. This system meets the requirements of Article 6.2 of the Charter.

3.6 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.

3.6.1 Article 7.1

117. The Netherlands has a long tradition of local democracy and the status of local appointed and elected representatives as well as the conditions of performance of their duties at the local level is generally assessed as positive. This is confirmed by the latest biennial report on the current state of Dutch democracy and public governance, published by the Ministry of the Interior. In general, the findings are positive with regard to support and remuneration for local elected representatives. In addition, there are several possibilities for facilitating and supporting the exercise of local representatives’ activities, such as the clerk or the registry

³⁴ Declaration contained in a letter from the Permanent Representative, dated 20 March 1991, handed over to the Secretary General at the time of deposit of the instrument of acceptance on the same day: “With regard to Article 6, paragraph 2, of the Charter, the Government of the Kingdom of the Netherlands takes the view that, in the framework of the Charter, only Article 9 of the Charter has any bearing on the financial resources of local authorities. This means that local authorities may not take any financial claims on central government based on the provisions of Article 6, paragraph 2, of the Charter. In the opinion of the Government of the Kingdom of the Netherlands, Dutch legislation is in accord with both the wording and the purport of Article 6, paragraph 2, of the Charter.”

(art. 107 Municipalities Act), budget for extra support (depending on a municipality's policy), etc. The municipal council is assisted by a secretariat ("*griffie*") for its support and according to its specific needs. More investment in these structures would be a possible way to guarantee logistical support as well as expertise in assisting councillors in their work. However, the use of these possibilities is decided by the single municipality and not always fully exhausted.

118. In particular for Councillors as lay persons with a part-time function it is increasingly difficult to cope with the vast and complex policies and issues to be decided at local level. By consequence, in the course of the ambitious decentralisation process, most councils limited themselves to a purely reactive role, not seizing the opportunity of the new policy field (social welfare tasks) to rethink their institution's central position within the local community. This makes the role of the opposition even more ungrateful, as the latter is limited to the work in the council, by contrast with the majority, which acts mainly through the Board of Aldermen. Also, many tasks are outsourced to semi-independent organizations ("*uitvoeringsorganisaties*"), for instance within the context of joint agreements between more municipalities, e.g. to provide youth care or get people to work. There is very little control that municipal council subsequently have over the choices made by these bodies.

119. Despite a third of parties competing in municipal elections being local parties, which is an indicator for interest and engagement, interlocutors told us that it is generally not easy to find candidates. Being a councillor is often considered too much work and (too) often councillors are exposed to pressure and threats. In fact, membership in political parties has decreased considerably: only 2% of citizens is member of a political party, with parties struggling to finding diverse members.³⁵ So far, there have always been sufficient candidates, but finding qualitative candidates may become a concern.

120. An additional concern, which has emerged from the meetings with the Dutch interlocutors, is the increasing number of incidents with aggression, intimidation, threats and violence, which seem to become a serious issue, at least in some municipalities. The worrying trend is confirmed by a recent survey: 25% of local officials has experience with aggressive behaviour and violence, 2% even with physical violence.³⁶

121. According to the rapporteurs' assessment, elected office holders can freely exercise their functions, in conformity with Article 7.1 of the Charter. However, in some cases the security environment gives rise to concern and should be carefully monitored in order to protect office holders from personal aggression.

3.6.2 Article 7.2

N.B. In their instrument of acceptance (1991), the Netherlands made a declaration that "it shall not consider itself bound by the provisions of Article 7 paragraph 2 of the Charter".

122. Municipal Councillors are not full-time politicians and usually have another day job. They do not receive redundancy pay but financial compensation in the form of a monthly fee. Every representative receives the same remuneration; the amount depends on the number of the municipality's inhabitants (see the following table) according to national regulation (*Rechtspositiebesluit decentrale politieke ambtsdragers*), from which municipalities do not have the right to deviate.

Number of inhabitants	Remuneration per month
0 – 40.000	€ 1.047,82
40.001 – 60.000	€ 1.362,81
60.001 – 100.000	€ 1.594,69
100.001 – 150.000	€ 1.810,49
150.001 – 375.000	€ 2.109,17
Over 375.001	€ 2.567,82

123. Municipal councillors in The Hague, for instance, receive a remuneration of approximately 2.500 euros per month. In addition, a Councillor receives an expense allowance for the costs associated with the exercise of council membership of € 181,28 per month, a travel allowance, a health insurance allowance, reimbursement for insurance for disability, retirement and survivor's pension. This compensation is appreciated and generally seen as (just) sufficient.

124. A matter of concern is the increasing number of hours that local elected representatives spend in order to fulfil their responsibilities. It seems that this number has increased to 19 hour per week, which is quite

³⁵ (<https://nos.nl/nieuw-suur/artikel/2116587-steeds-minder-mensen-lid-van-politieke-partij.html>).

³⁶ BRON: Monitor of Integrity and Safety 2020 – Bron: rapport "Goede ondersteuning, sterke democratie van Raad voor het Openbaar Bestuur.

substantial for a part-time activity.³⁷ It appears that in most cases municipal councillors have only limited access to resources and limited staff members or support. Increasing the support by the secretariat (see above) may be a way to reduce the pressure on council members permitting them to focus on their core tasks but Councils do not seize the opportunity to arrange the organisation of the secretariat in this way.

125. The salary of aldermen also depends on the number of inhabitants of the municipality. Financial compensation for alderman and mayors is generally considered as adequate (*Zie rapport Raad van Openbaar Bestuur*).

126. Dutch mayoralty is a full-time activity and mayors receive a remuneration in proportion to the number of inhabitants of their municipality (according to the same national regulation as for councillors from which municipalities and provinces must not deviate):

Mayor's remuneration per month	
0 – 8.000	€ 6.611,39
8.001 – 14.000	€ 7.273,22
14.001 – 24.000	€ 7.930,11
24.001 – 40.000	€ 8.620,48
40.001 – 60.000	€ 9.345,69
60.001 – 100.000	€ 10.133,05
100.001 – 150.000	€ 10.743,43
150.001 – 375.000	€ 11.511,73
Over 375.001	€ 12.332,08

127. In addition, a mayor receives an expense allowance of € 412,02 per month and a travel allowance. In case of dismissal or retirement the former mayor receives an allowance according to the stipulations of a specific law (*Algemene pensioenwet politieke ambtsdragers*).

128. In general, mayors in the Netherlands seem rather satisfied with the current situation regarding their status. However, there is an increase of (verbal) aggression and intimidation towards mayors, aldermen and representatives. This worrying development has a negative impact on job satisfaction.

129. Rapporteurs conclude that financial compensation for councillors, aldermen and mayors is legally entrenched and seems generally adequate. The requirements of Art. 7.2 of the Charter are satisfied.

3.6.3 Article 7.3

130. As provided by Art. 129.5 of the Constitution, all functions and activities incompatible with the holding of local elective office are determined by the Municipalities Act: for councillors (art. 13), for aldermen (art. 36b), for mayors (art. 68) and for members of the municipal audit office (art. 81f).

131. This is fully in line with the requirement of Art. 7.3 of the Charter.

3.7 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.

3.7.1 Article 8.1

132. The supervision over municipalities by the provinces and central government is constitutionally anchored (Article 132) and regulated in the Revitalisation of General Supervision Act, which entered into force in 2012.³⁸

³⁷ In fact, an increasing number of local councilors do not complete their four-year term because of the workload and the amount of time needed; Binnenlandsbestuur, 20 March 2018 (<https://www.binnenlandsbestuur.nl/bestuur-en-organisatie/nieuws/raadsleden-haken-af-door-werkdruk.9584326.lynkx>).

³⁸ 24 May 2012 (*Wet revitalisering generiek toezicht*) <https://zoek.officielebekendmakingen.nl/stb-2012-233.html>).

133. Municipal authorities are subject to supervision by a different authority in each policy area. The provincial authorities supervise municipal authorities' work on spatial planning, construction, the natural environment, housing, heritage and the structural safety of buildings and other works. The province is also responsible for financial supervision and for supervising the budget. Each municipality submits the budget and annual accounts to the provincial executives.

134. Central government supervises municipal authorities in those areas for which provinces have neither a remit nor expertise, such as social affairs.

In addition, central government also supervises provincial authorities' implementation of delegated competences.

135. The system complies with Art. 8.1 of the Charter, as supervision is regulated by law, and can only be enforced under the law.

3.7.2 Article 8.2

N.B. In their instrument of acceptance (1991), the Netherlands made a declaration that "it shall not consider itself bound by the provisions of Article 8 paragraph 2 of the Charter".

136. In accordance with the Constitution, the central government can at any given time demand compliance with national laws. If the government considers a local or regional decree to be in violation of a national law or damaging to the public interest, it may, under Article 268 of the Municipalities Act and 10:34 of the General Law on Administration, cancel such decree. It is also possible for a mayor to request for the cancellation of such decree (based on article 273 Municipalities Act). Nevertheless, this form of intervention from the national authority at local and regional levels has become increasingly infrequent over the past decades.

137. In addition, the national government, as stated in Article 124(2) of the Constitution, can demand the cooperation of the local and regional authorities in implementing national policies. Inter-administrative supervision is only aimed at the performance of '*medebewind*' tasks but is not intended to improve the quality of task performance. Intervention will only take place if legally established *medebewind* tasks are not (properly) performed or if decisions are contrary to the public interest or the law.

138. According to the government,³⁹ "the sole purpose of the supervision is to check whether lower-tier authorities are implementing their statutory delegated competences without concerning the quality of administration. The supervisory body only intervenes when statutory delegated competences are not implemented correctly or in full, or if the lower authority's decisions conflict with the public interest or with the law." If a municipality or province neglects a delegated competence, the supervisory body may intervene and take over that competence, at the cost of the municipality; if a decision by a municipal or provincial authority is in conflict with the law or with the public interest, it may be suspended and/or annulled by royal decree.

139. Specific forms of supervision have been abolished wherever possible, except from tasks for which the supervisory body bears operational responsibility under legislation, but whose implementation depends entirely on subnational authorities (e.g. the safety regions).

140. The system of supervision is fully in line with the requirement of Art. 8.2 of the Charter.

3.7.3 Article 8.3

141. If a decision of a given municipal or provincial authority is not in line with the law or with the general interest, the Minister of Interior and Kingdom Relations has the competence to suspend or quash that decision. However, there is a pre-established procedure to be followed (Articles 268-281 of the Municipalities Act). Before considering the use of the above competences, the Minister tries to solve the problem by consulting the authority that has taken the decision. By obtaining information about the background of the decision and, if necessary, suggesting alterations to or withdrawal of that decision, the Minister strives for a cooperative solution. As a result, in practice, the Minister has not quashed municipal or provincial decisions since the last report in 2014.

142. Besides, if a municipality or a province does not (adequately) execute a task ascribed by joint-governance legislation (*medebewind*), the Municipalities Act (Art. 268-281) and the Provinces Act provide for a procedure. If a municipality neglects a task, a provincial authority has the competence to execute that task in its place. If a provincial authority neglects a task, the responsible Minister has the competence to take the

³⁹ <https://www.government.nl/topics/municipalities/supervision-of-low-tier-authorities>

place of that authority. It has to be stressed that this procedure, as well as those regarding to suspending and quashing decisions, is meant as last resort. Any decision to intervene must be preceded by an 'intervention ladder' made up of six steps. The first step is for the supervisory body to identify the problem, followed by the opportunity to (adequately) execute the task (according to some instructions) in a set term, and the last step is its decision to actually use the power to intervene.

143. The Provincial Executive supervises the financial position of municipalities in each province. The Minister of the Interior and Kingdom Relations is responsible for the financial supervision of the provinces. If municipalities or provinces fail to comply with the Decision budget and Accountability Act (BBV), the supervisory body must accord the expenditures, programmes, budget and new policies.

144. The rapporteurs consider the proportionality principle in the intervention by supervisory authorities respected; thus, there is compliance with Art. 8.3 of the Charter.

3.8 Article 9: Financial resources

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.

3.8.1 Article 9.1: adequate financial resources of their own

145. Article 132 of the Constitution covers the organisation of the provinces and municipalities and determines the taxes that may be levied by provinces and municipalities. The intergovernmental financial relations are regulated by the Financial Relations Act (1996). The Municipalities Act and Provinces Act include extensive provisions on municipal and provincial finances.

146. The share of local and provincial government in public expenditure in the Netherlands is below the OECD average (16.2% of GDP and 40.4% of public spending in 2016). However, the share of Dutch SNGs in public staff spending is significant, close to the OECD average (62.9%) and above the OECD average for unitary countries (43%), reflecting important administrations, especially at the municipal level (there are on average 185.000 civil servants working in municipal governments compared to 13.000 officials working in provincial government). Within the expenditure on subnational governments, provinces accounted for 7%, and municipalities and inter-municipal bodies for 67% (the remaining part is shared by public water boards and other local government bodies).

147. Provinces and municipalities are mainly funded by – general – grants from the central government. More than 73% of their revenue comes from transfers, whereas their own tax revenue represents only 10.1% (2016), with municipalities accounting for 58% and the provinces for 16%. The remaining 26% is the share of public water boards as they collect their own taxes and levies (wastewater-treatment levy, water systems levy and a pollution levy).⁴⁰

148. In 2019, local governments had an income of € 72,4 billion. For municipalities the total income in 2019 was € 60,1 billion, for provinces € 8,2 billion and for water boards € 4,1 billion. More than € 22,9 billion of this amount came from own income. Other income amounted to € 37,19 billion. The local government received

⁴⁰ See for more detailed information the 2019 country profile, prepared by the World Observatory on Subnational Government Finance and Investment (an OECD initiative).

by far the largest part of this income (€ 30,15 billion) from transfers from the national government, through, among other things, the municipal and provincial funds.⁴¹

149. The ability of municipalities and provinces to raise own resources is very limited. Revenue autonomy (own revenue relative to total resources available) at the local level (provinces and municipalities) is lower than the EU average (28% versus 53% in 2018), which entails a dependency on central government transfers that is above the EU average (72% versus 48%). Local own revenues represented 9% of total government revenues in 2018, a value that was lower than the EU average (13%). The share of local taxes in total income is much higher for provinces (20%).

150. The composite ratio, which captures aspects of fiscal decentralisation of both revenue and expenditure, suggests that the governmental structure in the Netherlands is characterised by a degree of fiscal decentralisation (12% in 2018) that is slightly below the EU average (16% in 2018). As noted earlier, sub-national governments extract a very limited amount of resources from taxation. Despite this, they have a rather large degree of autonomy over local taxation, fully controlling 66% of total local tax revenues.⁴²

151. As an example, the revenue and expenditure of The Hague was approximately 2.800 million euro in 2020. By far the largest part of the municipality's income was derived from the national 'Municipal Fund': 44% of the total revenue. By contrast, only 5% was raised by local taxation, such as property and tourist taxes.

152. On the expenditure side, a large amount of the budget is spent on social welfare and unemployment benefits (15% of total expenditure), specialized (health-)care services (15%), and reintegration and promotion of job participation (4%).⁴³ The central government is involved in how some parts of the budget are spent; this even applies to revenue from local taxation. Other parts of the budget can be spent freely (here, the problem is rather the limited degree of discretion due to the lack of financial resources).

153. The rapporteurs conclude that overall, the entitlement to resources appears as adequate, although below OECD and EU average. A weak point is the high dependency on central government grants ('Municipal Funds'), although these are mostly general in nature. It appears that municipalities may decide mostly independently on how to spend their budget. The requirements of Article 9.1 of the Charter are therefore generally satisfied.

3.8.2 *Article 9.2: resources commensurate with responsibilities*

154. According to article 132.6 of the Constitution "the taxes which may be levied by the administrative organs of provinces and municipalities and their financial relationships with the central government shall be regulated by Act of Parliament". This is implemented by the Municipalities Act, which includes extensive provisions on municipal finances (Articles 108 and 186-258) as well as by the Financial Relations Act (*Financiële Verhoudingswet*), which regulates intergovernmental financial relations. Article 108.3 of the first 2 of the latter states that whenever new tasks are decentralized to municipalities or provinces, the financial consequences must be made clear, as well as the way in which these consequences can be covered. This is fully in line with Article 9.2 of the Charter which prescribes that "Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law."

155. Whether local resources are commensurate or not, is therefore not a legal question, but rather one for which an assessment of the practice is necessary. In fact, despite the statement by the Minister of Interior and Kingdom Relations that municipal tasks are funded "attune to the competences of municipalities and to their set of tools", it appears that the financial situation of the municipalities in the Netherlands is quite worrying. According to information provided by the VNG, there are more than a hundred municipalities that did not or hardly managed to present a balanced budget for 2020.⁴⁴ Thus, the issue of commensurate resources is controversial.

156. Over the last five years, local authorities had to face a high increase in costs in the area of youth support services and social support (to people with disabilities), both having been decentralised from central government in 2015. The central government calculated that municipalities would need fewer financial resources to provide the same quality of service investing in prevention and improvements in cost-effective

41 Information provided by Rijksoverheid (https://www.rijksbegroting.nl/2020/voorbereiding/begroting.kst264831_11.html).

42 Source: Committee of the Regions, Overview of fiscal decentralisation – The Netherlands (https://portal.cor.europa.eu/divisionpowers/Pages/NL-Fiscal-Powers.aspx#tabs-ct100_ct150_q_58a30437_161f_478c_adca_ff3894b836b50).

43 More detailed information on the municipality's budget is available at: <https://denhaag.begroting-2020.nl/> (in Dutch).

44 Infosheet VNG provided to Delegation, p.2.

efficiency. However, it appears that this was not the case in practice with estimates of about additional 1.7 billion euros annually, which municipalities have to bear for their new, decentralized tasks in the field of youth care. Thus, according to the VNG and interlocutors, these increased responsibilities of municipalities in the social domain have led to significant budget deficits with major financial consequences for the entire municipal budget. This is forcing local governments to make hard choices in order to compensate the losses. Vulnerable residents may not receive all the care they need, or other facilities, such as libraries, may have to be closed in order to continue organising care.⁴⁵ This issue is waiting to be resolved after the general elections in 2021 by the new government.

157. The gap between the responsibilities of municipalities and the available budget for fulfilling these is widened by the upscaling rebate introduced by the central government with the intention to scale up (merge) municipalities thus achieving benefits. While the upscaling was never carried out, the rebate has been introduced in the national budget, rising to € 975 million in 2025. Although the policy has not been implemented, interlocutors stressed that municipalities have to pay for it, despite not receiving any benefits!⁴⁶

158. According to this assessment of the rapporteurs, currently, the financial resources of local government are hardly commensurate with the (additional) tasks they must perform since the decentralisation; a particular concern regards rural municipalities and those with a lot of poor people.⁴⁷ This leads to the conclusion that despite the legal regulation which provides for the allocation of commensurate resources there is, in practice, only partial compliance with Article 9.2 of the Charter.

3.8.3 Article 9.3: local taxes and charges

159. Sub-national governments' own revenues represent only a small share of local revenues. Municipalities collect taxes, as set by the Municipalities Act (articles 216-258),⁴⁸ but local taxation is modest and primarily linked to the property of real estate and to taxes on dog ownership and tourists. Administrative fees and charges can only be used to cover the costs of the service they are linked to and the municipality is not allowed to make a profit on these services. In fact, revenue from local taxes is lower in the Netherlands than in many other European countries. As a result of the decentralisation process, the share of own income fell even further, from 33% in 2000 to 27.2% in 2019, because the transfers from the national government increased faster than the own income. With the decentralisation of the social domain in 2015, "other revenues" of local government increased by 6 billion Euro as the additional tasks transferred to municipalities were mainly financed through transfers from the central government. Thus, local authorities are mainly financed by central government based on set formulas, i.e. without tax sharing.⁴⁹

160. An expansion of the possibilities to introduce municipal taxes would reduce the great financial dependence from central government and contribute to a more independent functioning of local authorities. In addition, it would bring financial responsibility more in line with the increasing responsibilities of local authorities. To further the debate on expanding the municipalities' own tax base, the VNG has identified some benchmarks that such expansion should meet:

- A larger local tax area should serve to strengthen the link between determination, payment and accountability.
- A larger local tax area must be substantial.
- By contrast with government's limits of revenues, the horizontal, democratic accountability guarantees responsible taxation.
- There must not be an overall increase in the tax burden, but any expansion of municipal taxes is to be linked to a corresponding reduction in state taxes (made possible by reducing the municipal fund).
- It must be visible to the taxpayer that there is a shift and not an increase in taxes.
- Simplification by abolishing smaller levies is possible insofar as there are acceptable financial consequences at municipal level.

Regarding the improvement of local taxation an official report has been published in 2020 (a co-production of the Ministry of Interior, the Ministry of Finance and the VNG). It presents policy options for reforming the municipal tax area. One of the options is to significantly expand the municipal taxing capacity while

⁴⁵ Infosheet VNG provided to Delegation, p.2.

⁴⁶ Infosheet VNG provided to Delegation, p.2.

⁴⁷ Rural municipalities with an accumulation of social problems will suffer in the proposed redistribution of the municipal fund, Editorial, Binnenlandsbestuur 27 March 2021 (<https://www.binnenlandsbestuur.nl/financien/nieuws/arme-gemeenten-de-dupe-van-nieuw-gemeentefonds.16501710.lynkx>). The financial losers are mainly in Friesland, Groningen and Limburg.

⁴⁸ Source (<https://www.government.nl/documents/regulations/2014/09/25/municipalities-act>).

⁴⁹ See: Public Finance in the Netherlands (<https://www.rijksbegroting.nl/binaries/pdfs/this-site-in-english/public-finance.pdf>).

diminishing the Municipalities Fund by the same amount in order to strengthen the financial autonomy of the municipalities.⁵⁰

161. The rapporteurs conclude that the own income of municipalities is regulated in only partial compliance with Article 9.3 of the Charter. In fact, it must be noted with a certain concern that the decentralisation reforms have further reduced the already small local tax area. Thus, it appears necessary to launch a debate on how to enlarge this area in the near future.

3.8.4 Article 9.4: diversification of resources

162. Local governments' finances are strongly dependent on central government transfers (73,2% in 2016): the Municipal Fund (*Gemeentefonds*) which includes an integration grant, a decentralisation grant (including a new Fund for social affairs to accompany the decentralisation in the social sector, which in the meantime became part of the general grant) as well as specific grants from departments meant to cover the expenses of obligatory delegated tasks. General transfers to municipalities and provinces are managed by the centrally governed fund and consist of a lump-sum payment. It has a strong equalising function, and the formula takes into account spending needs and tax capacity of municipalities, with the aim to enable all municipalities to finance equivalent service levels at equivalent tax rates (60 different criteria are used for its allocation, such as population, earning capacity, real estate values, demographic variables, etc.; see below 3.8.5.). Municipalities also receive transfers from provinces (e.g. investment grants for roads and public transport).⁵¹

163. An additional problem is that the total amount of general transfers is indexed to total central government expenditures, creating a pro-cyclical correlation between local and central spending. This creates uncertainty and difficulties in medium-term planning for municipalities which do not know for sure on how much money to count on from their most important resource. In theory, according to the Minister of the Interior and Kingdom Affairs, this should be known for a four years-period, but there is an annual assessment which has meant – due to the link to the national budget – that for three years in a row there have been reductions in the available budget. Giving municipalities certainty regarding their most important financial resource is fundamental for their financial planning and even more important as the share of own income in the total income of local government fell from 33% in 2000 to 27.2% in 2019, due to the decentralisation process in 2015 (as illustrated above, 3.8.3. Article 9.3).

164. The rapporteurs conclude that there is only partial compliance with Article 9.4 of the Charter regarding the diversification of municipalities' resources. Not only are approximately three quarters of the local income determined by central government transfers, but these resources are also bound by a correlation with total spending at central level that makes them difficult to predict and thus complicates medium-term planning. A reflection on more diversified resources which are more predictable seems necessary (for example, on a share in national taxes).

3.8.5 Article 9.5: financial equalisation

N.B. In their instrument of acceptance (1991), the Netherlands made a declaration that "it shall not consider itself bound by the provisions of Article 9.5 of the Charter". It appears that the Netherlands decided to not commit itself to article 9.5 as it conflicts with the special status foreseen in Art 12 Financial Relationship Act (see paragraph 168). However, the delegation has received information also on other aspects of article 9.5.

165. In order to determine the single amount to be distributed to the municipalities from the municipal fund, central government has grouped the tasks of municipalities into three different clusters:

- *Physical domain:* Governance and support; Safety; Infrastructure, space and environment; Education; Sports, culture and recreation.
- *Social domain:* Basic social services; Individual facilities Youth; Individual provisions Wmo; Participation.
- *Income:* Income Real Estate Tax (OZB) and Other Own Resources (OEM).

166. A reassessment study using standard measures (benchmarks and criteria) shall bring the distribution in line with the costs of municipalities. For this purpose, research agencies have drawn up a list of criteria included in their study.⁵²

⁵⁰ Decisions about reforming the municipal tax area are left to the cabinet after the 2021 elections. Source (<https://www.rijksoverheid.nl/documenten/kamerstukken/2020/05/18/herziening-gemeentelijk-belastinggebied>).

⁵¹ SNG Wofi World Observatory on Subnational Government Finance and Investment (an OECD initiative), The Netherlands – country profile, 2019 (<http://www.sng-wofi.org/country-profiles/Fiche%20NETHERLANDS.pdf>).

⁵² Benchmarks for the distribution-recalibration of the municipal fund social domain (<https://www.rijksoverheid.nl/onderwerpen/financien-gemeenten-en-provincies/documenten/publicaties/2019/10/29/maatstaven-voor-de-verdeling--herijking-van-het-gemeentefonds-sociaal-domein>) and Measures of the distribution-recalibration of the municipal fund

167. The equalisation system of the municipalities fund takes into account the costs incurred by municipalities (cost orientation) and the income that they are capable of generating (fiscal capacity):⁵³

- Cost orientation: The equalisation system looks at objective cost-determining features of municipalities, for example the number of inhabitants, young people, seniors and benefit recipients, as well as the surface area, the number of population centres, etc. These characteristics are referred to as criteria and each criterion is linked to an amount per unit. Altogether there are more than 60 criteria. A municipality receives funds for every inhabitant, every young person, etc. A municipality that has high costs, e.g. due to many low-income inhabitants, receives more from the fund than a municipality with fewer costs. The criteria often change which adds to the problems of certainty in a mid-term (planning) perspective.
- Support: The equalisation system also considers the extent to which municipalities can generate income. The most important factor is the municipal property tax capacity. The tax revenues that a municipality can generate on the basis of a calculation rate that is equal for all municipalities are a negative criterion in the calculation. Whether a municipality actually has a high or low municipal property tax is irrelevant. A municipality that is capable of generating a relatively large income from the municipal property tax will receive less money from the municipalities fund – relatively speaking – than a municipality that is capable of generating only a small income.

168. If a municipality has large financial deficits in the budget over a long period of time, it may ask for extra resources from the municipal fund. By doing so, the municipality partly gives up its financial independence entering in a regime called “Article 12 status” (according to the 12th article of the Financial Relationship Act). This is a special provision for those municipalities that are technically bankrupt and are therefore put under financial oversight and conditions. If a number of central government conditions are met (which shall guarantee that the financial situation improves), an “Article 12 municipality” receives supplementary benefits on top of the normal payment from the municipal fund for one year or several years. The assumption is that the municipality can then continue independently and without extra money. As the managers of the Municipal Fund, the Minister of the Interior and Kingdom Relations and the Minister of Finance decide together how much extra money the municipality will receive from the municipal fund. The Guidelines to Article 12 Financial Relationships Act contain all the rules about applying for supplementary resources from the municipal fund. Between 2017 and 2020, two municipalities (Vlissingen, Lelystad) have received supplementary financial resources; between 22 and 29 million Euro have been provided as additional benefits.⁵⁴

169. In February 2021, a proposal for the new distribution of the municipalities fund has been presented by the Minister of the Interior. With the proposed redistribution, 159 municipalities will receive less funds, while 196 municipalities will receive more funding from central government. The Association VNG opposes this proposal criticizing the government for dividing scarcity. According to the association, a redistribution of the municipal fund needs to go hand in hand with a raise of the total budget.

170. However, interlocutors stressed the existing inequalities in practice between urban and rural municipalities with the latter disadvantaged and struggling to offer access to services. The only resource, over which municipalities can decide on their own, is the property tax. In fact, it has been raised in some municipalities, but this neither helps nor works in those municipalities, which are already poor.

171. Conscious that the Netherlands declared not to be bound by this provision, the rapporteurs conclude that there is only partial compliance with Article 9.5 of the Charter, as the current system does not eradicate existing inequalities, which should lead to a re-consideration.

3.8.6 Article 9.6: consultation on allocation of redistributed resources

172. Consultation has been examined regarding compliance with Art. 4.6 of the Charter (see above, 3.3.6). The Municipalities Act, the Provinces Act and the Intergovernmental Relations Code all stipulate that municipal and provincial government have to be “informed and consulted in good time” about new legislation and policies that concern the respective government. The Code on Intergovernmental Relations specifies the relationship between the different levels of administration and contains a checklist on how to involve VNG and the IPO in policy making and the formulation of laws. This consultation also includes the financial impact of new policies or decisions vis-à-vis local authorities.

other components (<https://www.rijksoverheid.nl/onderwerpen/financien-gemeenten-en-provincies/documenten/publicaties/2019/10/29/maatstaven-voor-de-verdeling-herijking-van-het-gemeentefonds-overige-onderdelen>).

53 Explanation provided by the Ministry of Interior and Kingdom Affairs after the Monitoring Visit.

54 Source: Rijksoverheid / Central Government (<https://www.rijksoverheid.nl/onderwerpen/financien-gemeenten-en-provincies/documenten/rapporten/2016/12/20/artikel-12-gemeenten-2017-2020>).

173. The rapporteurs conclude that the requirement of consultation on the allocation of redistributed financial resources is satisfied (Article 9.6 of the Charter).

3.8.7 Article 9.7: (non- earmarked) grants

174. The two Municipalities and Provinces Funds have become the main source of revenue for municipalities and provinces (73,2% in 2016). Municipalities (and Provinces) are assigned a certain degree of flexibility in spending the resources of the general grants, but these grants must be used to perform the assigned delegated responsibilities. While municipalities enjoy considerable autonomy for their policy in the decentralised area of youth and can determine themselves how they perform their new tasks, it appears that this autonomy is not accompanied by proportional financial autonomy. It therefore appears that the decentralisation process has led to a greater financial grip of the central government on the municipalities.⁵⁵

175. Earmarked grants also account for a large share of sub-national government revenues and are tied to the performance of specific activities by local authorities. These earmarked funds (decentralisation and specific grants) are meant to cover the expenses of obligatory delegated tasks in areas such as primary education and social services.

176. The rapporteurs conclude that there is formal compliance with Article 9.7 of the Charter. However, the decentralisation reforms have further increased the dependency on resources provided by central government and, correspondingly, its influence.

3.8.8 Article 9.8: borrowing

177. Fiscal rules and borrowing capacity:⁵⁶ Municipalities and Provinces are allowed to borrow on the credit markets and to issue bonds without any formal authorization by the central government. No ceiling for local government borrowing is formally in place and, as a general rule, local authorities can borrow until they are able to serve their debt-servicing expenditures. Nevertheless, in order to comply with the medium-term budgetary framework that imposes a "golden rule" (in respect of EU obligations), borrowing is used only to finance investments.

178. After having dropped from 2000 to 2007, deficit and debt at sub-national levels began rising, reaching a peak in 2012. Since 2012 the debt level has again been steadily decreasing. In 2016, the debt of the Dutch sub-national government sector amounted to 11,2 % of GDP. This is well below the OECD average (24.5% of GDP and 20.7% of public debt in 2016). In 2018, the consolidated gross debt of the local government sector amounted to 7.3% of the Dutch GDP. Outstanding debt is made up primarily of financial debt (70%); bonds as a percentage of total financial debt remain very limited (2.8% in 2016), loans making up the bulk of the financial debt stock (97.2%). The Municipal Bank of the Netherlands (BNG) is a funding agency established by the Dutch Association of Municipalities in 1914 in order to help municipalities access credit markets. Around 90% of its assets are loans to municipalities and other public bodies. Half of the bank's share capital is held by the State of the Netherlands and the other half by municipal authorities, provincial authorities and water boards. The Waterschapsbank is another Dutch bank specialised in loans to local governments.⁵⁷

179. The rapporteurs conclude that there is full compliance with Article 9.8. of the Charter.

3.9 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.

3.9.1 Article 10.1

180. In the Netherlands, there is a long and vivid tradition of cooperation among municipalities in all policy areas, ranging from mandatory to voluntary forms of cooperation. According to the Joint Regulations Act

⁵⁶ Detailed data on Dutch government finances can be found at (<https://www.cbs.nl/en-gb/figures>); the Ministry of Interior and Kingdom Relations as well as the VNG provided the Congress delegation with data.

⁵⁷ Data according to SNG-WOFI, World Observatory on Subnational Government Finance and Investment, OECD, 02/2019, p.4 (<http://www.sng-wofi.org/country-profiles/Fiche%20NETHERLANDS.pdf>).

(*Wet gemeenschappelijke regelingen*, *Wgr*), two or more municipalities can establish joint regulations in order to serve one or more certain interests that those municipalities share. A joint regulation often establishes a public body, but this is not mandatory. Municipal cooperation by means of a joint regulation is also possible across provincial borders and provinces and water boards can take part in the regulation, too. The main areas of municipal cooperation are in the social domain (e.g. youth care, societal support and public aid), safety (the safety regions, as prescribed by law) and the spatial domain (the environmental services, also prescribed by law).

181. However, the current framework for various forms of intermunicipal cooperation provided by the Joint Regulations Act (*Wgr*), is often experienced as complex and restrictive. Formally, the democratic legitimacy is guaranteed as the council authorizes the establishment, alteration and abrogation of each joint regulation in which the municipality participates. In addition, the council of each participating municipality is represented in the General Administrative board of the joint regulation. The representatives are accountable to their own municipal council with regard to the policy of the joint regulation.

182. But more in general, this “regionalisation” (i.e. intermunicipal cooperation within a certain regional area) has a major impact on the councils, boards of aldermen and the municipalities as a whole. Many subjects previously decided on by municipal councillors themselves can now only be influenced indirectly which raises issues with democratic control, legitimacy and accountability of decision-making in the regional area. According to the VNG, a fundamental debate is needed about the usefulness and necessity of inter-municipal cooperation, in addition to the search for legal solutions within the framework of current legislation: VNG has presented comments on a bill for improving the *Wgr*.⁵⁸ An amendment to the Joint Regulations Act to improve the legitimacy of joint arrangements and strengthen the position of the municipal council, has been proposed to parliament and has passed the Second Chamber. However, a wider perspective is needed: during the debate on the amendment, the Second Chamber has asked for a fundamental debate on the development of local and regional government in The Netherlands. There seems to be consensus on the necessity of change; however, any new policy will be made by the new government.

183. The coalition agreement of the last central government (Rutte III) also provided for “Regional Deals” for a number of related challenges such as population decline, population aging, energy transition, housing or crime prevention. In the coming years, various ministries and partners will be working on different tasks in an area-oriented manner (“regions”). However, according to the VNG, in the further development of regional cooperation, consideration must be given to the question of who is in charge of “the region”, above all, regarding financial decision-making and transparency of the allocation process.

184. The rapporteurs note with satisfaction that intermunicipal cooperation is well and frequently used in various forms. They conclude that there is full compliance with Art. 10.3 of the Charter. However, the ample use of cooperation, and also “regional deals” suggest a reflection about democratic control, legitimacy and accountability of decision-making, which need to be considered in a future reform of the legal foundations of this cooperation.

3.9.2 Article 10.2

185. In order to facilitate dialogues between the different levels of government, Provinces and Municipalities have united their representation in two associations: Provinces have organised themselves in the *Interprovinciaal Overleg* (IPO) and municipalities in the *Vereniging van Nederlandse Gemeenten* (VNG) which represent each layer in direct dialogues with the government; there is also an association representing the waterboards (UWV).

186. The two associations, VNG and the IPO, respectively, are inclusive, provide assistance and represent the municipalities and the provinces in negotiations. In fact, intergovernmental negotiation is deeply rooted in the Dutch tradition and culture. A wide range of issues is subject to political agreement between central government and provinces and municipalities, in particular at the beginning of a new legislature with the new government. After this, twice a year, the Prime Minister and the presidents of the VNG and the IPO meet to keep track of the common agenda in the so called “three-tier conference”. Therefore, VNG and IPO are recognized as interlocutors and representatives of the respective levels of territorial government. However, negotiations with central government do not always go smoothly as a decentralisation of tasks usually leads to spending cuts, meaning that the provincial and local authorities have less financial resources at their disposal compared to the government expenditure for the same functions in the previous years.

187. Overall, the situation deserves a highly positive assessment: there is full compliance with the “right to associate” requirements of Article 10.2 of the Charter.

3.9.3 Article 10.3

188. The geographical situation of the Netherlands, the historical tradition and the general co-operative culture of the country provide excellent foundations for trans-frontier co-operation. The Netherlands has ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, and its protocols enabling its local authorities to cooperate with their counterparts in other States.

189. Trans-frontier cooperation with neighbouring countries has intensified in recent years between municipalities, provinces and the central government and their counterparts on the other side of the border. An important instrument in this is the agreement on concrete cooperation agendas (*‘grenslandagenda’*) with Lower Saxony and North Rhine-Westphalia (Germany) as well as Flanders (Belgium). Recurring themes on these cooperation agendas are, in particular, the labour market, education, mobility, security, care and energy.

190. The Dutch cabinet supports this cooperation by stimulating cross-border initiatives (e.g. by means of so-called Regional Deals), creating the right preconditions and removing border obstacles for creating cross-border governance structures, and using instruments from the EU and Benelux.

191. The international cooperation agency of the VNG is to be mentioned, too, as it participates in numerous international co-operation projects around the world.⁵⁹

192. In conclusion, the rapporteurs consider the requirements of Article 10.3 of the Charter fully satisfied.

3.10 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.

N.B. In their instrument of acceptance (1991), the Netherlands made a declaration that “it shall not consider itself bound by the provisions of Article 11 of the Charter”.

193. Legal protection in courts, with local autonomy and its principles as basis for a challenge, is practically not an option for municipalities (and provinces) in the Netherlands. Due to the absence of the recognition of the principle of local self-government in the Constitution or in legislation, there is no general constitutional or legal foundation for decentralised authorities to challenge central government decisions claiming that their right to local autonomy has been violated. The Netherlands also lack a Constitutional Court where such a claim might be made (as comparative experience shows). Concrete policy decisions that directly concern a municipality can however be brought to an independent administrative court (but there is no court of appeal). Recently, there has been a court ruling about a decentralisation payment concerning a long-lasting dispute between the municipality of Veenendaal and, amongst others, the Ministry of the Interior and Kingdom Relations.⁶⁰

194. Remarkably, there is overall agreement between national, provincial and local governments in the Netherlands that challenging each other in courts would be detrimental to the reputation of government as a whole. Thus, as a general approach, recourse to judicial procedures for resolving controversies is avoided as much as possible also for this reason of political and institutional culture.

195. Despite the general respect for and tradition of local self-government, this lack of legal entrenchment and, by consequence, judicial control entails risks. Local competences of municipalities can be curtailed by adjusting legislation, without there being a legal basis for local and provincial authorities to challenge central government decisions regarding their autonomy. Important decisions are taken in political negotiations and agreements.

196. The rapporteurs conclude on non-compliance with Article 11, quoting the assessment of the previous report, which is still valid: “126. (...) the Netherlands are not bound by Article 11 of the Charter as it was not ratified. Consequently, this conclusion will not be part of the Congress Recommendation. This being said,

⁵⁹ VNG International (<https://www.vng-international.nl/about-us/vng-international-the-hague>).

⁶⁰ On 10 April 2020, ECLI:NL:RBMNE:2020:1576, available at: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBMNE:2020:1576>

the rapporteurs are of the opinion that the current situation of the Dutch legal system would not meet the requirements of Article 11 of the Charter if it would have been ratified.”

4. ANALYSIS OF THE SITUATION OF REGIONAL DEMOCRACY IN THE LIGHT OF THE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

197. The administrative structure of the Netherlands has been rather stable since 1830 and changes to the territorial structure of the provinces have been marginal (as opposed to the municipal level where restructuring and merging has been a constant). There are 12 provinces (*provincies*, singular: *provincie*) in the Netherlands: Drenthe, Flevoland, Fryslân (Friesland), Gelderland, Groningen, Limburg, Noord-Brabant (North Brabant), Noord-Holland (North Holland), Overijssel, Utrecht, Zeeland (Zealand), Zuid-Holland (South Holland). Going back to the 16th century, most of them have a rich historical tradition: from the “United Provinces” to a confederation which developed into today’s Netherlands (however, some of the present provinces were created in the beginning of the 19th century, and Flevoland only in 1986). Provinces are considered territorial, public legal entities, acting through their own organs. Articles 123 to 136 of the constitution regulate the provinces (together with municipalities and water boards, in the same chapter).

198. Thus, Provinces fully qualify as “regions” in the wide, encompassing concept applied by the Council of Europe Reference Framework for Regional Democracy (hereinafter, the Reference Framework) due to their character as territorial and administrative-governmental bodies, at an intermediate level of government between municipalities and the State, with their own competences and powers, specific legal regulation and a separate financial system as well as rule-making power (binding regulations).

199. The legal and institutional organization of province mirrors in many aspects that of municipalities and many issues are similar.

4.1 Antecedents: main developments concerning regional democracy

In the course of the large decentralisation process (“*Decentralisaties social domein*”), started in 2015, many tasks in the domain of health and social affairs, especially regarding youth care, have been shifted from the central government and provincial levels to the level of municipalities. The previous Government (Rutte II) wanted the provinces to concentrate on spatial planning, the provincial economy and nature conservation.

4.2 Constitutional scheme for regional democracy

200. The Constitution establishes that the organisation of provinces, their composition and the competencies of their administrative bodies are regulated by an Act of Parliament (Articles 123 and 124). The Provinces Act contains rules related to the governing bodies of provinces: the provincial council, the provincial executive and the King’s Commissioner.

201. The King’s commissioner is both the representative of national government (“the Crown”) within the provinces and the non-political chair of Provincial government (both Provincial Executive and the Provincial Council).

202. The representative governing body at the provincial level is the Provincial Council (*Provinciale Staten*), while the executive body is the Board (*College*) of the King’s Commissioner (*Commissaris van de Koning*) and the Provincial Aldermen (*Gedeputeerde Staten*).

203. The members of the Provincial Council are directly elected every 4 years by the residents of their province. The parties that compete for their votes are mainly national parties, but over the last 15 years participation by regional and local parties has increased (both at the level of provinces and of municipalities). In the 2018 local elections local parties won most seats, with 27 % of the votes. Runners up were the VVD (14 %), CDA (13 %) and D66 (9%). The fragmented political landscape nationally is thus also reflected locally.

204. The “organic law” on Provinces is the Provinces Act (*Provinciewet*), which originates from 1850. Although it contains some tasks and competencies of the provinces, there is no comprehensive set of competences for provinces (as in the case of municipalities, see above). The provincial competences are identified by different laws and regulations covering several sectors. This also means that there is no “inherent” or “constitutionally protected” core of provincial competences, but these are dependent on the will of Parliament or the central government. On the whole, provinces are primary public actor in spatial planning, infrastructure and transport, nature conservation and environmental policies, regional economic

development, regional culture and conservation of monuments, (financial) supervision of municipalities and water boards, and rural development. However, competencies are often shared with the central government and with the municipalities (and increasingly with the EU).

205. Rules regarding provincial finances and the financial relations between the various levels of government are laid down in the "*Financiële-verhoudingswet*" (originating from 1897). The provinces receive money from central government to manage nature areas, build and maintain cycle paths, oversee provincial public transport, and provide services in the areas of young people, the arts and culture. Like the municipalities, the provinces are increasingly performing tasks that were previously in the direct responsibility of central government.

4.3 Internal organisation

206. Provincial councils (*Provinciale Staten*) are composed of members directly elected through regular, direct elections that are held every four years. The electoral system is proportional, and the number of provincial councillors is proportional to the province population (ranges from 39 to 55). The competence to regulate and administer the internal affairs of the province is vested in the provincial council. Provincial ordinances, which may not contravene Acts of Parliament, are adopted by the provincial council in so far as the power of adoption has not been granted to the provincial executive or the King's Commissioner by Act of Parliament or by the council pursuant to Act of Parliament.

207. After the provincial elections, the parties represented in the provincial council elect the executive (Provincial Aldermen, *Gedeputeerde Staten*). The provincial executive, composed of the Aldermen and the King's Commissioner, is the management body of a province and prepares and implements all decisions of the provincial council. Like with the municipalities, the central government may also request the cooperation of provinces in the execution of laws.

208. The King's Commissioner is appointed for a term of six years by royal decree on the recommendation of the provincial council and is accountable to the latter. Historically, the King's Commissioner is the representative of the King, today he or she is considered as representative of deconcentrated State authorities. Thus, he or she is not elected but "selected" by the provincial council and formally appointed by Minister and King. As the appointment procedure is identical to the one described above for mayors, the same considerations as to the appointment of the mayor apply. However, the King's Commissioners operate with more distance to everyday society than mayors and therefore the matter of their appointment seems to be rather a topic discussed among politicians, with both, the public and administrative science, appearing rather satisfied with the functioning of the system in practice.

209. The King's Commissioner's role has been described by one interlocutor as "guardian of ethical principles and counsellor on good governance". His/her main tasks are the promotion of cooperation between the various institutions and organisations within the province through regular working visits to municipalities, institutes, organisations and companies in the province as well as those of being a chairperson and full member of the provincial executive and representative of the province vis-à-vis business. He/she also chairs the provincial council.

210. More in detail, the King's Commissioner has the following main competencies and tasks:

(a) As a representative of the Crown:

- Advice to the minister of the Interior about the (re)appointment of mayors and responsibility for the quality of the selection and appointment process of mayors;
- Supervision of the governance of the safety and security regions;
- Mediation in governance related issues between municipalities;
- Advice the national government on substantial issues that arise in the province;
- Coordination of the approach of complex dossiers, such as the diminishment of nitrogen in all areas of the province.

211. In addition, the King's Commissioner is empowered by Act of Parliament to execute official instructions given by the Government; for example, in cases of emergency or concerning mayors. In that way he/she is a body of the Government and accountable to the Government, not to the council.

(b) As a representative of Provincial government, the King's commissioner supervises the extent to which municipalities take decisions within the framework of the law and the common interest. In both roles the autonomy of local government is respected, and the King's Commissioner will interfere in local affairs only in highly urgent cases.

Remuneration and financial compensation

212. The remuneration of a member of the provincial council is € 1.270,38 per month. In addition, as a council member he/she receives an expense allowance for the costs associated with the exercise of council membership of € 181,28 per month, a travel allowance, a health insurance allowance, reimbursement for insurance for disability, retirement and survivor's pension.

213. The King's Commissioners remuneration per month is € 12.332,08. In addition, King's Commissioners receive an expense allowance of € 1.194,29 per month and a travel allowance. In case of dismissal or retirement the former Commissioner receives an allowance according to the stipulations of a specific law (*Algemene pensioenwet politieke ambtsdragers*).

4.4 Analysis of the situation of regional democracy on an article-by-article basis, from the perspective of the Council of Europe framework reference for regional democracy

4.4.1 Regional competences

214. The tasks and competencies of the provinces are laid down in the Dutch Constitution and in the Provinces Acts (the "*Provinciewet*") as well as in other legislation. Responsibilities exercised by the Provinces include

- Spatial-planning, urban development: the Provincial Councils draw up guideline plans for spatial development; the Provincial Executive Board is responsible for endorsing land-use plans.
- Housing: the provinces are responsible for allocating quotas with regard to social housing and they decide on the grants awarded to the municipalities.
- Culture and recreation: the provinces are responsible for the promotion of tourism and culture.
- Transport: the provinces are responsible for the development and maintenance of provincial roads, cycle paths and bridges.
- The environment: the provinces draw up and implement environmental protection plans, monitor compliance with environmental laws on air, soil and water quality. Provincial authorities also clean up pollution, carry out soil remediation, create and maintain nature areas and supervises the regional water authority.
- Regional economic development: the provinces establish investment banks and are responsible for cooperation between the public authorities and business.
- (Financial) supervision of municipalities (and waterboards): Municipalities must submit their budget and annual accounts to the provincial executives.
- Water management.

215. Competencies in these fields are often shared with the central government, with the municipalities, and waterboards (and increasingly with the EU). This means that there are hardly any tasks that are exclusive to provinces, but in the mentioned fields the provinces are an important and, in some cases, primary public actor. In some areas, there is a certain overlap between "municipal" and "provincial" competences. In those cases, the distinction is based by considering cities autonomous within their boundaries, while for all activities outside their territory the province is responsible.

216. In the Netherlands the division of competences between the government layers is neither determined permanently legally nor constitutionally, but rather a result of political negotiation. In the application of the principle of subsidiarity, a preference for decentralisation to the local level clearly dominates. As a result, municipalities have (and receive) many tasks and responsibilities (and spend about half of the national government budget). By contrast, the provinces play a relatively modest role. But there is currently no debate about provincial competences or a re-distribution in order to strengthen the provincial level.

4.4.2 Relations with other sub-national territorial authorities

217. In order to tackle issues that transcend provincial and municipal boundaries and the additions to tasks of municipalities by the decentralisation process, an important trend in provincial self-government is the development of joint provisions, supra-regional and supra-local partnerships such as the Metropolitan Region Amsterdam (MRA), the Metropolitan Area Eindhoven and the Metropolitan Region The Hague - Rotterdam (MRDH). The latter is a partnership of 23 municipalities working together on regional issues, in particular on stimulating economic innovation and improving mobility for the region. The province of South-Holland, for instance, is involved in several inter-provincial co-operations. Among others, these co-operations include the development of nature, economy and/or environment in areas that cross provincial borders (such as the

NLDelta-programme). Moreover, there are several examples of co-financed research in which two or more provinces contribute.

218. However, in those cases, the governance structure becomes inevitably more executive-driven and more detached from the influence and control of representative institutions such as municipal councils and provincial states. As a result, the guarantee of democratic control and legitimacy seems to become weak, according to interlocutors.

219. On all matters that concern local government directly the provinces consult the municipalities extensively and intensively. The influence of municipalities on provincial policy-decisions is substantial and effective.

4.4.3 *Involvement in the State decision-making process*

220. In the Dutch bicameral system, the First Chamber (Senate) represents the regional element with its 75 members elected indirectly through provincial councils. It engages directly with local and provincial authorities (see above, consultation of municipalities, Art. 4.6 Charter). However, Article 50 of the Constitution explicitly mentions that the representatives of both houses represent the "entire people of the Netherlands" and Article 67(3) of the Constitution expressly states that the members of both chambers are "free from burden" in their vote, i.e. free from political party directives, regional or local pressures, interest group pressures, etc.

221. Since 2019, citizens in the Caribbean Netherlands (Bonaire, Sint Eustatius and Saba) can also participate in the elections, but for these territories, the representatives for the First Chamber are elected by electoral colleges.

222. Provinces represent their interests vis-à-vis the central government either directly or through their association, the IPO (similar to municipalities: directly or VNG). According to the assessment of most interlocutors, involvement in decision-making processes at State level is sufficient (although not always satisfactory). In general, the departments of national government comply with codes and agreements on intergovernmental relations. However, this compliance is not formally enforceable.

4.4.4 *Supervision of regional authorities by State authorities*

223. The national government is in charge of supervision of the provincial authority (art. 132, Constitution). Supervision is limited to checking whether decisions are not in conflict with laws and whether authorities stay within their budget limits. A decision of the provincial authority can be annulled or suspended by the Government when decisions are contrary with the law or public interests. Thus, supervision of provinces is – mirroring the way in which provinces supervise municipalities – very restricted (Articles 253-274 Provinces Act). As long as provinces take decisions within the framework of the law and within their budget, there is no way for national government to intervene in provincial decisions.

4.4.5 *Protection of regional self-government*

224. Although reform of the regional level is discussed on a regular basis, actual reform is rather limited. In 2012, the government (Rutte-II, a liberal-socialist coalition) had proposed to create 5-7 larger regions ("landsdelen") to replace the current 12 provinces, starting with the merger of Noord-Holland, Utrecht and Flevoland into the "Noordvleugel"-province (the Northern part of the Randstad). The provinces concerned opposed this idea and mobilized support from the Dutch Senate. As a result, the legislative process to bring about the merger was abandoned in 2014. Shortly after that, the government decided to abandon the idea of provincial mergers altogether.⁶¹

225. However, protection is all political. Safeguarding provincial (and local) autonomy and self-government is the responsibility of national Parliament and the Minister of the Interior. In the Netherlands, no court exists which can control matters of competence and compliance in this respect (see above, 3.10). There is also no Constitutional Court. Recently there was some discussion within Parliament whether an institution like a Constitutional Court should reinforce administrative consistency through judicial review. Again, the introduction of such an institution would change the whole system considerably.

⁶¹ Groenendijk, Regionalisation in The Netherlands, 27 November 2017 (<https://aer.eu/regionalisation-netherlands-regional-reform-discussed-limited-ror2017/>).

4.4.6 *Right of association*

226. The 12 Dutch provinces are united in the '*Interprovinciaal overleg*', Association of Provincial Authorities (IPO), which is an association that advocates for the position of the Dutch provinces in both The Hague and Brussels and provides the opportunity to stimulate innovation and share knowledge. It is actively representing the provinces in negotiations with the central government (see above, 3.9).

4.4.7 *External relations. Trans-frontier co-operation*

227. Due to the geographic situation of the Netherlands, all provinces are involved, more or less intensely, in trans-frontier cooperation. Cooperation is usually focusing on the specific challenges highly populated metropolitan areas are facing as a result of climate change and energy transitions while developing their positions as (inter)national hubs of economic activity. An impressive example is the province of South-Holland: although this province does not even have direct borders with regions from other countries, it participates in several regional cooperation programmes. The detailed information provided during the monitoring visit may serve more in general for illustrating the general openness of all provinces to trans-frontier cooperation. The following three paragraphs contain a brief oversight of the Province of South Holland's cooperation activities with Germany, Belgium and the U.K.

228. The German state of North Rhine-Westphalia is an important partner to South Holland. Co-operation takes place through the representation of Dutch border provinces (*Grenspost Dusseldorf*) and international networks, but also through bilateral contacts. The main areas of interest are sustainable mobility along the Rhine-Alpine Corridor and the development of hydrogen infrastructure. It has recently been upgraded with a working agenda on mobility and traffic, which was signed by five Dutch provinces and North Rhine-Westphalia. This working agenda has created a strong foundation for further co-operation, e.g. the joint *RH2INE* programme that focusses on hydrogen-based inland shipping along the Rhine-Alpine Corridor. South Holland and North Rhine-Westphalia are also exploring co-operation in the field of hydrogen as part of the shared ambition to lower CO2 emissions in their industrial clusters. Concrete actions in this field will focus on developing a hydrogen infrastructure from the port of Rotterdam to the industrial cluster of North Rhine-Westphalia. Possibilities for co-operation in other areas, for example bio-economy, are on the agenda to be explored in the near future.

229. In its cooperation with Belgium, the focus for South Holland lies on Flanders. Together with the Belgian provinces of Antwerp, East and West Flanders, further collaboration shall regard mobility and infrastructure, environment and culture. South Holland actively participates in the cross-border network *Vlaams-Nederlandse Delta* (VND), of which the provinces of Antwerp, North Brabant, East Flanders, West Flanders and Zeeland are also members. The network was founded in light of the strategic location of the river delta of the Rhine, the Maas and the Scheldt. As the gateway to the North Sea serving the European hinterland, with the ports and industrial clusters in Rotterdam, Antwerp, North Sea Port, Zeebrugge and Moerdijk, there are many shared challenges in the areas of (circular) economy, climate, energy transition, sustainable mobility, logistics and infrastructure. The network also provides an informal platform for the King's Commissioners, governors and deputies of the six affiliated provinces and representatives of the Dutch embassy in Belgium, the Benelux union, the Flemish government in The Hague, and officials of the Dutch Ministry of Infrastructure and Water Management and the Mobility and Public Works Department of the Flemish government.

230. South Holland also co-operates with regions in the United Kingdom, mainly within EU subsidy programmes. Due to the Brexit, several of these partnerships have unfortunately ended as some of the EU subsidy programmes have been discontinued. However, there are some programmes in which the United Kingdom will continue to participate, such as Horizon Europe. This will provide stakeholders in South Holland the opportunity to maintain or commence a partnership with British stakeholders. The Brexit has also forced South Holland and British regions to explore ways to co-operate outside the EU framework. One example is the *Straits Committee*, of which Kent County Council is a member, another one is the *Coastal Conference of Peripheral Maritime Regions* (CPMR) in which South Holland participates with several British regions. Within CPMR, South Holland is a member of one of the six geographical commissions, namely the North Sea Commission.

4.4.8 *Regional finances*

231. Provinces are largely dependent on grants from central government, although they are allowed to collect taxes and have own revenue from taxes (tax on motor vehicles) and other income (primarily from equity).

Rules regarding subnational finances and the financial relations between the various levels of government are laid down in the Financial Relations Act ("*Financiële-verhoudings wet*").⁶²

232. As for municipalities, also the own tax domain of provinces is traditionally small. Provinces levy a surtax on the central government tax on vehicles ("*opcenten motorrijtuigenbelasting*"). The rate of this surtax can differ between the provinces, but it is capped by the central government (there are concerns about decreasing tax revenues from Motor Vehicle Tax (MRB) of provinces due to the tax exemption for electric vehicles). In addition, provinces receive revenues from user charges and from revenue on (financial) assets (such as interest and dividends)⁶³.

233. Thus, like in the case of municipalities, most of the funding comes from central government grants: the Provincial Fund ("*Provinciefonds*"). It consists of a general (block) grant, redistributed on the basis of an equalisation system, i.e. the grants from the fund to specific provinces depend on a variety of parameters, including the number of inhabitants, land and water area, and length of provincial roads.⁶⁴ In addition, there are various payments allocated from the government funds (integration and decentralisation grants) as well as specific grants for delegated tasks. Provinces are free to decide how they spend the grant they get from the fund. In addition, provinces get specific ("earmarked") grants, which have to be used for specific tasks.

234. The "*Provinciefonds*" is managed by the central government and funded annually by central government revenues. The amount paid from the Provincial Fund to provinces is determined in relation to the overall level of central government expenditure, i.e. if central government expenditure is reduced or increased, the grants from the fund are reduced correspondingly. This creates some uncertainty in planning, as provinces can never be sure how much money they will actually receive from the provincial funds. Municipalities have to cope with the same problem, as the system of central government transfers as well as their overall dependency from those funds are the same. By contrast, the share of provincial taxes in total income is relatively large, which reduces their planning problems.

235. In addition, the dependency of the provinces on national funding has shown some anomalies over the years. For instance, in 2012, central government aimed at merging the provinces of North-Holland, Utrecht and Flevoland assuming that such a merger would lead to efficiency gains (see above, 9. Protection of regional government). Therefore, all provincial budgets were cut, not only those of the provinces involved. Even when it was clear that this merger would never be implemented at all, this budget cut was structurally maintained. Budget cuts were also the consequence of the transfer of two municipalities from the Province of South Holland to the province of Utrecht (to form the municipality of *Vijfheerenlanden*), motivated by the assumption that South Holland would have less expenses due to the reduction in the number of municipalities. These examples show sub-national government in the Netherlands to be dependent on rather random budget decisions by central government.

236. There is also a large difference in equity between provinces, although the mechanism in the transfer system of the Provincial Fund has been adapted. However, this change only relates to the interest rate on this equity and not to the equity itself. So 'rich provinces in terms of equity' do have a lot more financial autonomy than the poorer ones.⁶⁵

237. Some interlocutors stressed that regarding the financial dependency of local and provincial authorities on central government, the situation has not changed since 2013, nor indeed since the first monitoring by the Congress in 1999. Although enhancing the possibilities for provinces and municipalities to raise taxes of their own has been a continuous topic of discussion, so far, no measures have been taken to improve this situation. However, the Ministry of the Interior has recently started a research in cooperation with the Association of the Provinces (IPO) in order to look into options for a more independent funding. Other

62 Internet consultation on amending this act ran from 5 February to 16 March 2020, VNG web-site <https://vng.nl/wetsvoorstellen/wijziging-financiële-verhoudingswet>

63 AER study on regionalisation, Prof. Dr Nico Groenendijk, on Netherlands, 2015 <https://drive.google.com/file/d/0B94jJjQLXnId01weFhKemlNcUU/view>

64 <https://www.government.nl/documents/regulations/2014/09/25/act-of-10-september-1992-containing-new-provisions-governing-provinces>.

65 Thus, paragraph 156 of the previous monitoring report (2014) is still valid:

"A noteworthy aspect of provincial finances consists in the fact that, in recent years, some provinces have obtained a large amount of resources thanks to selling their public utilities for gas, electricity, etc. to large private companies. For instance, the province of Gelderland has obtained 5,340 billion euros, Noord-Brabant 3,571 billion, etc. At the other end stand provinces like Groningen (0.81 billion euros) or Flevoland (0,183 billion euros [38]). Since most of these public utilities were rather concentrated in some provinces due to historical reasons, this development has produced a difference in wealth among provinces and a certain inequality in terms of real powers to intervene, to provide services and to finance projects in their regions. Moreover, according to some provincial leaders, the Provincial Fund did not sufficiently take into account the fact that this particular situation created an important gap between those provinces which could benefit from this situation and those which could not and which consequently had less possibilities to perform their competences." (Page 40 of 53, Monitoring Report 2014).

interlocutors, however, defended the current Dutch system, predominantly based on central government transfers, referring to advantages such as solidarity between rich and poor regions as well as to the prevention of tax competition between regions (and between municipalities). They rather point to the adequacy of financing, meaning that provinces receive sufficient resources to perform their tasks. An example where this falls short for provinces is the economic domain that is currently largely financed from the EU. With so-called Regional Deals, the government has been supporting provinces in this area for some time, but this has not become a structural instrument.

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

The Ombudsman

238. As an interface between citizens and authorities the Ombudsman helps citizens where they encounter problems with the authorities. The ombudsman flags and communicates these problems, while citizens and authorities need to solve them. In addition, authorities may learn from the complaints they receive adjusting or improving their services, after taking into account the perspective of the citizen.⁶⁶

239. Local authorities are obliged by law (Municipalities and Provinces Acts) to provide for a municipal ombudsman with jurisdiction regarding the way in which public bodies or their staffs behave towards citizens. While municipal ombudsmen have jurisdiction only over complaints regarding their own municipality, municipalities can choose to establish an ombudsman jointly with other municipalities, or to join an ombudsman institution of another municipality (in all cases, jurisdiction over complaints concerns all cooperating municipalities). The same applies for the provincial level.

240. If none of these options is chosen, the independent National Ombudsman, who is competent for the national government and its bodies, has subsidiary jurisdiction by law. Currently, the National Ombudsman is competent for all 12 Dutch provinces and also for 263 of the currently 352 municipalities (in 2021; due to the explicit choice of the concerned provincial and municipal councils).

241. In addition, there are 26 other ombudsmen for the remaining 89 municipalities (in 2021); there are also provincial ombudsmen in some instances. However, the capacities of these 26 local ombudsmen are very different. While those in Amsterdam, Rotterdam, The Hague and Groningen have their own desks and organization as well as the financial means to carry out their work, the situation is much more difficult in other, smaller cities and municipalities. According to the "Venice principles",⁶⁷ the law should prescribe that the budgetary allocation of funds for the Ombudsman institution should be sufficient to enable it to assume and perform its responsibilities and functions fully, independently and effectively. However, when establishing the local ombudsman facility, the Dutch legislator consciously chose not to prescribe this and to leave it to the local government to make choices. For the National Ombudsman, the current share of € 0.23 per inhabitant of a municipality is sufficient, but while this amount is actually higher than for many small local ombudsman facilities, it is also significantly lower than what the facilities of large cities can count on.

242. In addition to national legislation, the councils of municipalities instituting their own ombudsman or joining other local bodies must create their own local provisions to regulate specific local matters. The Association of Dutch municipalities (VNG) has provided a model for local regulation of the ombudsman which municipal councils can adopt as their own or use as the basis for a modified regulation. Thus, most procedural provisions for local ombudsmen and for the National Ombudsman are the same or very similar.

243. Anyone can file a complaint by law about the (mal-)functioning of government. No distinction is made between natural persons or legal persons. This does not mean that the ombudsman can deal with all complaints: for example, the content of a law is excluded. The most common complaints at the local level are:

- Slow government action.
- Providing insufficient or unclear information.
- Financial and income support (debt counselling, forgiveness, recovery and payment arrangements).
- Support with care and assistance requests (Social Support Act, youth assistance).

⁶⁶ The general recommendations for public authorities have been summarized and published by the National Ombudsman in the "Guidelines for Proper Conduct" (<https://www.nationaleombudsman.nl/folders-en-brochures/guidelines-on-proper-conduct>).

⁶⁷ Reference here is to principles 21 (resources) and 22 (sufficient staff), European Commission for Democracy through Law (Venice Commission), Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles"), Strasbourg, 3 May 2019, Opinion No. 897/2017, CDL-AD(2019)005 ([https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e)).

- Housing (lack of adequate housing).
- Unclear regulations and unclear responsibilities of various governments.
- No possibilities for personal contact.

244. In practice there is little or no overlap between the competences of the National Ombudsman and those of the other local or provincial ombudsmen. Where a complaint is directed against the national government and the local government which may open the competences of two ombudsmen. In those cases, the National and the local Ombudsmen jointly agree on who takes the lead.

245. The ombudsman tries to influence in various ways, in particular through investigation and by issuing a report. In 2020, the Ombudsman was approached almost 30,000 times, and 200 reports were released. In many cases an intervention occurs through a phone call, by e-mail or through a conversation, by employees, officially, sometimes also directly by the ombudsman. There are also regular visits and discussion of problematic issues. Besides the regular media such as newspaper and TV, also social media are used.

246. By contrast with interest groups, such as the Association of Municipalities (VNG), involved in consultation on laws that affect local authorities, the National Ombudsman has no formal role in consultation regarding the preparation of legislation. In specific cases, the ombudsman is asked to give his opinion. Discussions are currently being held within the organization of the National Ombudsman on how and in what way the National Ombudsman could provide advice on the (possible) implementation of new legislation in practice.

247. In addition to the National Ombudsman, also other organizations deal with human rights and relative complaints, e.g. the Human Rights Commission. If complaints concern human rights, this issue will be discussed with the responsible local government. In addition, this topic is raised through voluntary investigations. Examples include reports on ethnic profiling and the lack of sufficient standing places for Roma and Sinti and travellers.

248. Local authorities are important players when it comes to the realisation of human rights. In the past few years, the emphasis appears to have shifted to the protection of public safety and to preventing of unsafe situations and of threats to public order as well as to the protection of the privacy of citizens and of various freedoms of expression.

Citizens' participation in local public life

249. The Netherlands ratified the Additional protocol to the Charter and declared it applicable to municipalities and provinces in the European part of the Kingdom; it entered into force on 1 June 2012. The Constitution has no provisions on referendums, which means that any referendum held at a national or local level cannot be binding as long as the Constitution gives primacy to legislatures.

250. Referendums have been discussed in the Netherlands for decades. Between July 2015 and July 2018, it was possible in the Netherlands to request an advisory referendum for certain legislative proposals and treaties. In July 2018, the Consultative Referendum Act was repealed. A binding referendum is not possible for the time being because this would require an amendment to the Constitution. The proposal to introduce a corrective referendum was rejected by the House of Representatives in 2017. However, at the end of 2018, the State Parliamentary System Committee in its final report 'Low Thresholds, High Dikes' recommended that a corrective binding referendum be introduced after all. At the end of January 2019, SP Member of Parliament Ronald van Raak again submitted an (initiative) proposal for the introduction of a corrective binding referendum. It concerns the first reading of a constitutional revision. This proposal was adopted on 26 January 2021, after which - after the elections - a second reading can take place.⁶⁸

251. Provinces can hold – (only) non-binding and consultative – referendums. Only 5 out of 12 provinces (Noord-Holland, Friesland, Zeeland, Limburg and Utrecht) have established the procedures for citizens to request a referendum. A lot of municipalities experiment with referenda or self-budget etc., with mixed results. However, although there is an increase in the number of referendums held at the local level, this instrument has so far not been used at the provincial level.

252. On the whole, local democracy in the Netherlands is representative democracy. Local elections are mostly seen as opinion polls for national elections, as most voters seem to cast their votes according to their political preferences at national level. The context of the 'One Government'-approach, the difficulties in clearly separating political responsibilities due to cooperation and decentralisation as well as the small size of the

68 Source: Referendum, in: Parlement.com (<https://www.parlement.com/id/vh8lnhrsk1yn/referendum>).

Netherlands do not help in making distinctions in local politics clearly visible. But there is also an increasing number of local parties or citizens' lists. However, these local parties have little opportunity to operate professionally. Public financing of political parties is guaranteed through the Law on Financing of Political Parties (Wfpp) which links a party's budget to the number of seats held in the Senate and House of Representatives. The Association of Netherlands Municipalities (VNG) has advised to amend this law adding a specific regulation for local political parties. This would allow funds to be granted to all local political parties, which they can subsequently use to employ more staff members, follow training courses, improve their campaigns and attract more party members.

253. It seems difficult to involve citizens, although experiments in some municipalities and cities have been mentioned, e.g. citizens' budgets. In a report from 2018, the topic is explored under different perspectives and smart combinations of instruments are advocated, so that they reinforce each other, e.g. mini publics and referendums; village and district councils and do-democracy; better support for councillors and direct decision-making by citizens.⁶⁹

254. Organised crime: Some interlocutors mentioned the increasing presence and influence of organised crime, also in rural areas, as one of the current challenges and concerns. There appears to be a concrete risk that the system of democracy and the rule of law and more in general the public domain become increasingly interwoven with the criminal environment. Some recent examples were mentioned: the crisis in local governance of The Hague, threats towards representatives of local and regional authorities (including the Mayor of Haarlem), and systematic fraud in the public domain such as real estate fraud, human trafficking, fraud with subsidies, including healthcare fraud.

255. Migration policy: While central government is responsible for migration policy, the consequences of this policy affect municipalities to a large extent. In fact, integration happens at the local level and municipalities and cities play a key role (within a context of integration policies determined above all by the European Union and the national level). Civic integration, income provision, guidance to work and housing are examples of tasks that lie with the municipalities. Housing, in particular, is under severe pressure, because apart from migrants, other groups (homeless people, women in shelters, social shelters) need to be housed, in addition to the regular groups (young people, poor, etc.) in a context where suitable housing is a problem. It is not in dispute that until 2030, 100.000 homes will have to be built annually, but it seems impossible already today that this target will be achieved. Undocumented migrants (illegal immigrants) who reside within municipalities without being sufficiently identified pose a further problem for local social services.

256. From 1 January 2022 onwards, municipalities will be responsible for the civic integration of new citizens, as opposed to the current situation where the responsibility to meet integration requirements lies with migrants themselves. This change entails creating individualised integration plans and providing language and civic integration courses to all migrants. The responsibility will be twofold: asylum status holders fall completely under the guidance of the municipalities (this includes paid language courses and participation activities), whereas regular third country nationals will benefit from guidance but will still be themselves responsible for their civic integration courses. In anticipation of this new national civic integration act, Amsterdam has launched its New Amsterdam Approach to Civic Integration. With this approach in mind, the city builds on the focus of intensifying the intake process of new migrants, providing language and civic integration courses, reducing administrative financial burdens, and developing an intensive three-year guidance.

5.1 Challenges faced by local and regional authorities in their management of the Covid-19 pandemic and lessons learned from the health crisis

257. Safety regions are at the centre of the response to the Covid-19 pandemic. The prevention and control of an epidemic of an infectious disease, such as the coronavirus (COVID-19), are regulated by two laws: (a) the Public Health Act (Wpg);⁷⁰ (b) the Safety Regions Act (Wvr).⁷¹

258. The chairman of the safety region, one of the mayors of the respective area, is responsible for combating an epidemic of an infectious disease (article 6.4 Wpg). The Public Health Act grants him/her various powers and excludes those of other administrative bodies, for example, to close buildings or sites or parts thereof in

69 Linze Schaap (red.), Wieke Blijleven, Frank Hendriks, Daan Jacobs, Niels Karsten, Julien van Ostaaïen, Charlotte Wagenaar, Ambitie & Ambivalentie. Vernieuwing van de lokale democratie in Nederland, Tilburg Center for Regional Law and Governance, Eindrapport, d.d. 24/11/2018 (https://pure.uvt.nl/ws/portalfiles/portal/28420604/SchaapEtAl_Ambitie_Ambivalentie_20181124.pdf).

70 Public Health Act 2008 (Wet publieke gezondheid) (<https://www.global-regulation.com/translation/netherlands/3075072/public-health-law.html>).

71 Safety Regions Act 2010 (Wet veiligheidsregio's) (<https://www.government.nl/documents/decrees/2010/12/17/dutch-security-regions-act-part-i>).

the event of a serious threat to public health through contamination. The chairman of the safety region can also take other measures on the basis of the Wv. In the event of a disaster or crisis of more than local significance, or of serious fear of its occurrence, the chairman can exclusively apply the (emergency) powers of mayors to maintain public order. Those powers are described in the Municipalities Act. For example, the chairman can issue an emergency order or enact an emergency ordinance (to implement and enforce the measures announced by the Minister). By consequence, the powers of the local mayors to combat the pandemic are limited. The deliberate choice made by the legislator is that in disasters and crises affecting wider areas or the whole country, the command shall rest with one person and the hierarchical relationships need to be clear.

259. However, local mayors remain involved in crisis management. They remain authorized to take subsidiary measures for matters that arise as a result of or in the context of the current crisis provided that these are only of local importance and fall outside the scope of the emergency ordinance of the chairman of the safety region. In addition, the local mayors are part of the regional policy team (RBT) to be convened by the chairman. The Safety Regions Act (Wvr) regulates accountability for action in the event of a supra-local disaster or crisis. The chairman only takes a decision after consulting with the RBT. If there is agreement on the measures to be taken, the decision taken by the chairman of the safety region can be regarded as the decision of all mayors represented in the RBT. Subsequently, after the crisis, they are accountable to the respective municipal councils. A mayor can lodge a written objection in the RBT, if he/she is of the opinion that the intended decision disproportionately harms the interests of his municipality. During the visit, interlocutors assessed the consultation as functioning and positive.

260. Consultation of the local and regional government with regard to decision-making also applies during the sanitary crisis. The local authorities (especially the mayors), as well as their umbrella organisations, are involved in the preparation and implementation process of all COVID-19 regulations. The “Temporary Act measures COVID-19” (in force since 1 December 2020), maintains the existing relationships between the central government and local and regional authorities. The municipal government still has specific own powers and the ministerial regulations regarding the COVID-19 approach differentiate between municipalities and safety regions. Consequently, the consultation of local governments has become closer since the outbreak of the COVID-19 virus. Measures can be adapted to the specific situation at local and regional level: 1. by introducing differentiation in the ministerial regulation between municipalities and (safety) regions; 2. by stipulating in that ministerial regulation that the mayor is authorised to designate the places where relevant measures apply, 3. by the mayor’s authorisation to grant exemption in special cases. Apart from this, municipalities/municipal councils can set their own rules with autonomous municipal bylaws, as long as they do not conflict with the rules set by or pursuant to the Act. However, the impact of the pandemic has changed the balances between local institutions with the Municipal Council now exercising mostly a controlling role (i.e. after policy has been implemented), instead of determining the main principles of policy. In addition, councillors hardly have opportunities to influence the executive-driven regional security policies (see above). This concern could only partly be addressed by the Temporary COVID-19 Act.

261. On the whole, the crisis has shifted (decision-making) power back to central government and certain powers have been transferred from the municipality to the safety region through the Safety Regions Act. The national pandemic response plan grants emergency powers to the Minister of Health, Welfare and Sport (VWS). Also, multiple national crisis committees have been set up, for example the Ministerial Crisis Management Committee (MCCb). Municipalities have to operate within this framework when making decisions on the measures to be applied on their territory.

262. The severe consequences of the COVID-19 pandemic affect all levels of government. The current crisis has a substantial impact on the financial, economic, health, psychological and educational situation in the Dutch society deepening divisions between citizens. National, provincial and municipal governments are doing whatever is possible to assist citizens, self-employed professionals and entrepreneurs, mostly by financial support measures compensating those who suffer from restrictions for containing the pandemic. For instance, provinces have created support measures for affected sectors, such as the culture sector, regional public transport and regional economic development. As first governmental layer to do so, the 12 Provinces together presented one Regional Economic Recovery Plan.

263. But the crisis also has an important impact on provincial financial management: incomes are decreasing, while expenditures increase. This applies to municipalities as well. In order to face this problem, the central government has taken several financial measures to help regional and local governments to overcome this

crisis and to compensate for the increase of costs related to the COVID-19 crisis, for example, in necessary youth care, the increase of waste collection, etc.⁷²

264. The management of the COVID-19 crisis in the Netherlands has given rise to a number of citizens' complaints to the ombudsmen. Municipalities are responsible for the financial support of their residents, including financial compensation by the government for mitigating the consequences of the pandemic. This creates long waiting times and differences between municipalities. Municipalities are also responsible for the health services that conduct tests and administer vaccines. Citizens complain about unclear communication and information. While police enforcement of the lockdown is a state responsibility, in some municipalities the police are supported by municipal employees and their action in enforcement has been subject to complaints.

6. CONCLUSIONS AND RECOMMENDATIONS

265. Local democracy and local self-government have a long tradition in the Netherlands. Their meaning and practice have changed considerably over time, not least due to the creation and re-organisation of the welfare state which aims at equal services and similar living conditions throughout the country not allowing for major difference. The political, legal and cultural context is the one of a unitary State ("one government" approach) and of decentralisation of public functions in order to increase the efficiency and to save costs.

266. Municipalities and provinces fulfil a wide range of tasks and competences, in comparison with other European countries. However, their own sources of income and their competence to raise taxes is very limited, which means that they depend for a considerable part on transfers from central government. Most municipalities in the Netherlands are quite large in size and fulfil many of their tasks together with other municipalities, which creates (the impression of) a quasi-regional government in many areas, raising issues of democratic control and accountability. It appears that the whole Dutch system of local government is currently under considerable strain. Despite its strong roots in tradition and political culture (coalition governments, at all levels), which favour negotiation, compromise and agreement between levels of government, it may even have reached certain limits. In this sense, the situation is substantially different from the previous monitoring visit (2013).

267. One of the main reasons for this assessment is the impact of the massive decentralisation process which started in 2015 and was (too) quickly implemented. From hindsight, it appears as a bargain between the central government, which intended above all to save costs (and indeed realized budget cuts of about 20%), and local authorities which were eager to take over new and relevant tasks. But for these important tasks in the social sphere new technical know-how and adequate funding were needed and while the former take time to build up, the latter were not sufficiently provided. The result, at least for some municipalities, is disastrous and the next central government will have to intervene, together with the representative associations VNG and IPO.

268. As a collateral effect a certain re-centralisation (e.g. complex youth care) has occurred as well as outsourcing of the new tasks to semi-private bodies and companies. Apart from weak legal foundations, this risks to leave an important sector of public welfare and social rights of citizen to technocratic management driven by business logics with hardly any democratic supervision. And as it is often organized through intermunicipal cooperation ("regions", see above), it also leads to fragmented service delivery in fields such as health care, employment and social services.

269. Also, the 25 "safety regions" in which one chairperson (a mayor) decides for a network of mayors raise questions of democratic control and accountability: for such a massive exercise of emergency powers the legal base is quite thin (regulations based upon emergency clauses) and democratic control via the councils does only extend to the mayors and their implementing acts, but do not reach the chairperson of the safety region. These 'safety regions' have become important actors in the response to the Covid-19 pandemic. But the extraordinary measures for combating the pandemic illustrate how severe limitations of fundamental rights can become (i.e. restriction of free movement or prohibition of manifestation in public); democratic and/or judicial control is therefore absolutely necessary as a counterweight to emergency powers.⁷³ This also applies to the 30-off other regions (see above).

72 See (<https://vng.nl/sites/default/files/2020-05/reflectie-coronacrisis-en-uitdagingen-voor-lokaal-bestuur.pdf>). In 2021, the current government has raised the budget for decentralised tasks for all municipalities allocating an extra €1.314 billion for the year 2022 to compensate for the shortages in youth care. That is in addition to the previously committed €300 million for that year.

73 European Commission for Democracy Through Law (Venice Commission), Respect for Democracy, Human Rights And The Rule Of Law During States Of Emergency – Reflections, Strasbourg, 26 May 2020 CDL-PI (2020)005rev Or. Engl. ([https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e)).

270. More in general, the Dutch tradition and culture of “*Polderen*” (discussing/negotiating/bargaining) has certainly many advantages in terms of inclusion. But it also makes the identification of who has the final say difficult and risks to reduce democratic accountability. This phenomenon is particularly relevant in a growing number of policies implemented through intergovernmental agreements and by means of intermunicipal cooperation. While concerted action is again positive and promises efficiency gains, important policy fields such as migration or energy transition require clear decisions and accountable decision makers. The more so, as these are often delicate areas, which may even be(come) contested between central government and local authorities (again, migration may serve as an example). While political negotiation is useful for flexibility, law and legal regulation provide the necessary framework for certainty in procedures and accountability in decision-making. It appears that there is an over-reliance on governmental decision, intergovernmental relations and political negotiation, to the detriment of certainty and accountability as illustrated by the decentralisation example. Thus, the current legal framework needs to be adequately updated and adapted to the challenge of the current massive shifts in governance. Otherwise, the substantial autonomy in local affairs will inevitably be further reduced.

271. It seems that a clear set of principles is needed for the important intergovernmental relations. Regular meetings alone are not sufficient. The flexibility of political negotiations is an advantage, but certainty and accountability are necessary for guaranteeing democratic participation, strategic planning and the responsibility of institutional actors. The recognition of local self-government as a fundamental principle in the Dutch constitutional and legal system would be an advantage here, as it would have to be respected also in negotiations. In addition, a flexible legal regulation, for instance a Multilevel Governance Act, could enshrine the main substantial principles (e.g. subsidiarity and proportionality, commensurate resources together with new tasks etc.) as well as fundamental procedural requirements (information, consultation etc.). This would enable municipalities and provinces, the weaker partners in intergovernmental relations, and add to consistency in the relations with central government, without limiting the latter's possibility to formulate strategic objectives for the country.

272. Another issue is – formal and informal – regional cooperation, in which many municipalities engage as they are too small for executing the manifold tasks on their own. The phenomenon has become so common and important that a new level of administration is emerging, at an intermediate level between municipalities and provinces. A “kind of regionalisation without a clear legal framework” is under way, which again raises questions of democratic control and accountability. The Council of State informed the delegation that a new advisory opinion for the cabinet is under preparation on this issue.

273. The kind of local revenue also plays an important role. Dutch provinces and municipalities are mainly funded by grants from the central government. Resources available to municipalities are mostly determined at national level. Around 90% of the municipal budget is spent on tasks delegated from central government (*medebewind* and decentralisation), but the budget is not directly related to the nature of tasks. The risk of democratic impoverishment can only be avoided by creating a direct link at local level between decision making, financial resources and accountability. In the current dire situation, some municipalities try to raise taxes where possible in order to cover budget deficits, in particular the property tax (which ironically does not produce much income in poor areas, though...). The biggest share of local revenue is raised by fees for services, for example garbage collection. A solution could be a share in a major tax revenue, such as income tax. However, according to interlocutors there is not much debate about such a solution, and many have expressed the fear that inequalities between municipalities would actually increase.

274. The relationship between central and local authorities and more specifically the balance between tasks, powers and funding, are the topics of a debate, the Dutch Senate is supposed to hold with the government on decentralisation. The experience of the decentralisation process and the concerns of municipalities regarding the difficulties in fulfilling the decentralised tasks with the available budget and the resulting pressure on other municipal tasks shall be addressed. As municipalities only have very limited possibilities for increasing their income, the question of the balance between tasks, powers and financial resources directly affects the feasibility of legislation, a criterion to be assessed by the Senate. The question of adequate democratic control over the performance of these tasks in ever-changing regional contexts shall be discussed.

275. Finally, the issue of the appointment of Dutch mayors (as well as King's Commissioners) has been recurrent for the Netherlands, discussed in depth and flagged as an issue in all previous Congress monitoring reports and recommendations. In the past, between 2002 and 2008, (non-binding) referendums have been held in 7 cases on the election of mayors: in all cases, the candidate favoured by residents was appointed mayor. In two cases (Utrecht and Eindhoven), the minimum turnout for validity (30%) had not been reached. Due to low turnouts, in 2008, the mayor's referendum was abolished by law and the experiment ended.

276. In 2018, a constitutional amendment regarding the appointment procedure of Mayors and King's Commissioners has been adopted. The amendment entered into force and the respective legislation for implementing it can now be adopted. The rapporteurs note with satisfaction the de-constitutionalising that has opened the way for the legislator to regulate and eventually change the procedure.

277. However, regretfully, there are no clear plans for a shift towards elected Mayors, so far. There is one (minority) political party in favour of continuing the royal appointment, by contrast, another one favours direct elections, while most parties seem to prefer the indirect election of the Mayor by the Council. In fact, in the meetings no clear preference for one or the other solution did emerge among the interlocutors heard. Thus, there is still a need to take a political decision on which system to adopt for the election of Mayors after the de-constitutionalisation.

278. In the past, the mayor used to be the neutral representative of the Crown in municipalities or cities. However, over the last decades his/her role has become more political. This is due to the increasing importance of the Mayor's functions in the field of safety, public order and, in the current pandemic, due to the decisions on restrictions of fundamental rights (also the 'safety regions' are run by Mayors). Another field of – political – contention is the issue of migrants and refugees. The central government's restrictive policies have been challenged, in some cases, by Mayors engaging in a more open, humanitarian policy, often making direct reference to obligations and rights under international law (for example, in the cases of shelter for irregular migrants). Again, this is a political choice at local level. Mayors are therefore more prominent and political figures than ever. This change of the role raises concerns about their democratic legitimacy: while an important influence of the Council seems guaranteed even in the current appointment procedure, it is also true that no mayor or King's Commissioner needs to engage in an electoral campaign.

279. In this regard, the rapporteurs would like to underscore that the democratic election of mayors is an important cornerstone of democratic legitimacy of any system of local self-government, which is interlinked with the citizens' rights to participate in local public affairs. However, any change of the appointment system must consider the entire local system of checks and balances between the municipal council and the municipal executive.

280. Therefore, the rapporteurs are of the opinion that the problem of appointed mayors in the Netherlands goes deeper and beyond the formal respect of Article 3.2 of the Charter, and that a reform establishing a democratic relationship between mayors and voters in the formal sense needs to remain the final goal in the transformation of the appointment procedure. The rapporteurs consider that the Dutch local self-government system would only benefit from such a democratic overhaul.

To conclude, the rapporteurs would also recommend:

- Recognition of the principle of local self-government in the Constitution and/or legislation.
- Improvement of the decentralisation reform through re-calculation of the necessary funding for municipalities and by providing targeted support to municipalities in need.
- An assessment of the financial divide between rural and urban municipalities become the basis for addressing differences between municipalities with targeted measures as well as real inequalities in citizens' access to services.⁷⁴
- The legal regulation of intergovernmental relations and intermunicipal cooperation needs to be adapted to the massive shifts in governance (e.g. current process of "regionalisation") in order to provide an adequate, updated and certain legal frame for political negotiation.
- A change in the system of financial resources which takes the nature of tasks into account, respects the principle of commensurate finances and increases the share of local resources (or creates a similar secure base, such as a share in a national tax).

⁷⁴ In its comments on the draft report, the government emphasized that the new distribution of the municipalities fund is still work in progress.

APPENDIX – Programme of the Congress remote monitoring meetings in the Netherlands

**MONITORING OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT:
THE NETHERLANDS**

PROGRAMME OF REMOTE MEETINGS

25 – 27 January 2021

Congress delegation:

Rapporteurs:

Mr Vladimir PREBILIC

Rapporteur on local democracy
Chamber of Local Authorities, SOC/G/PD⁷⁵
Mayor of Kocevje, Slovenia

Mr Robert-Csongor GRUMAN

Rapporteur on regional democracy
Chamber of Regional Authorities, EPP/CCE⁷⁶
County Councillor, President of the foreign affairs committee,
Covasna County, Romania

Congress secretariat:

Ms Svitlana PEREVERTEN

Co-Secretary to the Monitoring Committee

Expert:

Mr Jens WOELK

Member of the Group of Independent Experts on the European
Charter of Local Self-Government, Germany

Interpreters:

Ms Sybelle VAN HAL

Mr Hildo BOS

The working languages - for which interpretation is provided during meetings - are Dutch and English.

⁷⁵ SOC/G/PD: Group of Socialists, Greens and Progressive Democrats

⁷⁶ EPP/CCE: European People's Party Group in the Congress

Monday, 25 January 2021

THE ASSOCIATION OF NETHERLANDS MUNICIPALITIES (VNG)

Mr Hubert BRULS, Vice chair, Mayor of Nijmegen
Mr Pieter JEROENSE, Deputy Director
Mr Bert VAN VIJFEIJKEN, Advisor of General Director
Mr Luuk HEIJLMAN, Head of corporate staff

THE NATIONAL DELEGATION OF NETHERLANDS TO THE CONGRESS

Mr Leendert VERBEEK, Head of the delegation, King's Commissioner of the Province of Flevoland
Mr Jakob WIENEN, Deputy Head of the delegation, Mayor of Haarlem
Mr Harald BERGMANN, Mayor of Middelburg
Ms Brigitte VAN DEN BERG, Alderman of Beverwijk
Mr Joris BENGEOVOORD, Mayor of Winterswijk
Mr Jan MARKINK, Gedeputeerde (Regional Minister), Province of Gelderland

THE ASSOCIATION OF NETHERLANDS PROVINCES (IPO)

Mr Theodorus BOVENS, President, King's Commissioner in Limburg
Mr Alexander van den BOSCH, Senior advisor Europe

MINISTRY OF INTERIOR AND KINGDOM RELATIONS

Ms Kajsa OLLONGREN, Minister

Ms Lenny VERLOOP, Head European Affairs Unit
Mr Alain KRIJNEN, Head Public Administration Unit
Ms Marianne VAN DEN BERG, Head Funding Domestic Administration Unit
Ms Annemiek VAN DER PAL, Advisor European Affairs

ENSCHDEDE

Mr Jeroen DIEPEMAAT, Deputy Mayor

Ms Gerdien LOOMAN, Senior advisor

NATIONAL OMBUDSMAN

Mr Reinier VAN ZUTPHEN, National Ombudsman
Mr Jan PRINS, Member of the National Ombudsman's office

Tuesday, 26 January 2021

COURT OF AUDIT OF THE RANDSTAD

Ms Ans HOENDERDOS-METSELAAR, Director

PROVINCE OF SOUTH HOLLAND

Mr Floor VERMEULEN, Regional Minister

Ms Charlotte HARTE, Policy Advisor, EU and International Affairs

Mr Dick BERKHOUT, Advisor, programme manager

Ms Gao WANG, Administrative affairs department

COUNCIL OF STATE

Mr Thom DE GRAAF, Vice-President

Mr Jan FRANSSEN, Member of the Council of State

Mr Ron VAN DER VEER, Council Advisor

Wednesday, 27 January 2021

THE HAGUE

Mr Jan VAN ZANEN, Mayor

Mr Ralf SLUIJS, Councillor, Hart voor Den Haag/Groep de Mos

Mr Chris VAN DER HELM, Councillor, The People's Party for Freedom and Democracy (VVD)

PARLIAMENT

Mr Boris DITTRICH, Chair of the Standing committee on The Interior and the High Councils of State /General Affairs and the Household of H.M. the King, the Senate

Mr Remco NEHMELMAN, Secretary General of the Senate

Mr Fred BERGMAN, Clerk of the Standing Committee on The Interior of the Senate

Ms Ilse VAN DEN DRIESSE, principal advisor on European Affairs, the Senate

GEMERT-BAKEL

Mr Michiel VAN VEEN, Mayor