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Local and regional democracy in the Netherlands

Rapporteurs:[1] Artur TORRES PEREIRA, Portugal (L, EPP/CCE)
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Summary

This is the third report on the state of local and regional democracy in the Netherlands. It underlines that the Dutch authorities seek on the whole to implement the principles set out in the Charter and are ready to consider the pertinence of ratifying some of the provisions not accepted at the time of ratification of the Charter. The report underlines the efforts made at municipal level, in particular in the context of the "Dualisation" reform and the modification of the Municipalities Act. It also refers to the good relationship between central and local authorities and to the authorities' desire to ensure citizen participation in the political decision-making process. However, the report does express some concern about the fact that the principle of local self-government is not recognised in the Constitution or the relevant legislation. Moreover, the competences of municipalities and provinces are not clearly delimited and are restricted because of the *medebewind* co-governance mechanism. The mechanisms for consultation of municipal authorities by central government are also inadequate. Lastly, the report highlights the lack of financial resources of local authorities, which are dependent on state transfers and whose income has been limited by the local taxation reform.

It is recommended that the Dutch authorities apply Article 2 of the Charter and define the principle of local and regional self-government in the Constitution or in domestic law. They are urged to clarify and reinforce the "autonomous" and "proper" competences of municipalities and provinces, while also improving the mechanism for consultation between central government and local authorities. The Dutch authorities are also asked to amend the law on municipal and provincial finances and to improve local taxation so that local authorities have greater autonomy. Lastly, the authorities are encouraged to reconsider the relevance of the declaration of non-acceptance of certain provisions of the Charter made when the Charter was ratified by the Netherlands.

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

Local and regional democracy in the Netherlands

RECOMMENDATION 352 (2014)[2]

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

a. Article 2 paragraph 1.*b*. of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers of the Council of Europe on the Congress of Local and Regional Authorities, which states 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 2 paragraph 3 of the aforementioned Resolution CM/Res(2011)2, which states that "the Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented";

c. Resolution 307 (2010) REV2 on procedures for monitoring the obligations and commitments entered into by the Council of Europe member States in respect of their ratification of the European Charter of Local Self-Government (ETS No. 122; hereafter "the Charter");

d. Resolution 299 (2010) of the Congress on Follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009), which states that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply made by the Committee of Ministers to Congress Recommendation 282 (2010) (CM/CONG(2011)Rec282final, encouraging the governments of member states to take account of the above mentioned Reference Framework;

e. Recommendation 55 (1999) on local and regional democracy in the Netherlands and Recommendation 180 (2005) on the state of local finances in the Netherlands.

2. The Congress stresses the following:

a. The Kingdom of the Netherlands (hereafter "the Netherlands") became a member of the Council of Europe on 5 May 1949. It is one of the Organisation's founding States. It 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. 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 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).

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 16 December 2009 with entry into force on 1 June 2012.

2. Debated and adopted by the Congress on 26 March 2014, 2nd sitting (see Document CG(26)7FINAL explanatory memorandum), rapporteurs: Artur TORRES PEREIRA, Portugal (L, EPP/CCE) et Jean-Pierre LIOUVILLE (R, SOC).

3. It notes that:

a. Mr Artur TORRES PEREIRA (Portugal, L, EPP/CCE), Rapporteur on local democracy, and Mr Jean-Pierre LIOUVILLE (France, R, SOC), Rapporteur on regional democracy, were instructed by the Monitoring Committee to prepare a report on the Netherlands and to submit it to the Congress;[3]

b. the monitoring visit took place from 14 to 16 May 2013. During this visit, the Congress monitoring 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 (at national and local level) several local authorities (Amsterdam, Zoeterwoude, Gouda, local audit offices) the Association of Municipalities (VNG) and the Association of Provinces (IPO);

c. the delegation would like to thank the Permanent Delegation 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 throughout the visit.

4. The Congress notes with satisfaction:

a. the generally positive nature of local democracy in the Netherlands as regards the implementation of the principles enshrined in the Charter, particularly those laid down in Articles 3, 5, 6, 7, 8 and 10;

b. the "Dualisation" reform from 2002-2003 by which the whole municipal organisation has been reformed, separating the composition, functions and powers of the council and the executive board;

c. the modification of the Municipalities Act which regulates the involvement of the council in the appointment procedure of the mayors;

d. the generally good relationship between central and local authorities;

e. the positive impact in the work of local and regional authorities, of the 2013 version of the Code on Inter-administrative relations, concluded between the Government, the IPO and the VNG, especially on the process of consultation and regarding matters of cooperation, coordination, mutual assistance supervision and control;

f. the fact that Dutch authorities are ready to consider the pertinence of ratifying some of the provisions not accepted at the time of ratification of the Charter;

g. the attention for active participation of Dutch citizens in the political decision-making process.

5. The Congress regrets:

a. that the principle of local self-government is not explicitly or directly recognised either in the applicable domestic legislation (Municipalities Act) or in the Constitution as required in Article 2 of the Charter;

b. the lack of clarity as regards competences for municipalities and provinces (Article 4 para.1);

c. that under the co-governance mechanism of *Medebewind*, local authorities' capacity to act and to take decisions is much more reduced when compared to their "autonomous" competences (Article 4 para.4);

3 They were assisted in their work by Mr Angel Manuel MORENO MOLINA, consultant with the Group of Independent Experts on the European Charter of Local Self-Government and Ms Stéphanie POIREL, Secretary to the Monitoring Committee of the Congress.

d. the fact that the mechanisms of consultation with municipal and provincial authorities during the process of planning and decision making in all matters directly affecting them, such as laid down in the Code of Inter-administrative relations, are not yet fully complied with (Article 4 para. 6);

e. the inadequacy of financial resources freely available to local authorities, their dependence on State transfers and their limited own income in the framework of their competences (Article 9 para. 1 and 2);

f. that the local taxation reform has limited the income of municipalities and provinces (Article 9 para. 3).

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

a. clearly define the principle of local and regional self-government in domestic law or in the Constitution, in the light of Article 2 of the Charter;

b. clarify 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 para. 1 of the Charter;

c. reinforce the "autonomous" and "proper" competences of municipalities and provinces and reduce the tasks performed under the *"Medebewind"* procedure, in the light of the Article 4 para. 4;

d. strengthen the mechanism of consultation between the State and the municipal and provincial level during the process of planning and decision making in all matters affecting the local authorities directly (Article 4 para. 6 of the Charter);

e. amend the law on municipal and provincial finances in order to grant local authorities more autonomy from State transfers and allocate appropriate and concomitant financial resources for all competences exercised by municipal and provincial authorities, as required by Article 9 paras. 1 and 2;

f. improve local taxation so that local authorities can raise their own funds, in line with the requirements of Article 9 para. 3 of the Charter;

g. reconsider the ratification of some non-accepted provisions of the Charter by a legislative amendment of the domestic law, notably its Article 7. 2 which is apparently applied *de facto*.

7. The Congress invites the Committee of Ministers of the Council of Europe to take account of the present recommendation on local and regional democracy in the Netherlands, as well as its explanatory memorandum, in its own monitoring procedures and other activities relevant to this member State.

Local and regional democracy in the Netherlands

EXPLANATORY MEMORANDUM

Contents

1. Introduction: Objective of the visit, terms of reference, scope

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution (2011) 2 of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (hereinafter referred to as "the Congress") shall prepare on a regular basis country by country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe and shall ensure, in particular, that the principles of the European Charter on Local Self-Government are implemented.

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).[4]

3. In the domain of local and regional democracy, the Netherlands has also signed and ratified other Council of Europe conventions, namely 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. Mr Artur Torres Pereira, Portugal (L, EPP/CCE), Rapporteur on local democracy, and Mr Jean-Pierre Liouville (France, R, SOC), 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 Mr Angel-Manuel Moreno, 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 14 to 16 May 2013.

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 (at national and local level) several local authorities (Amsterdam, Zouterwoude, Gouda, local audit offices) the Association of Municipalities (VNG) and the Association of Provinces (IPO). The detailed programme of the visit appears as Appendix to thisdocument.

7. The present report has been drafted on the basis of the information received during and after the visit to 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 has also been used.

4 http://www.conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=122&CV=1&NA=&PO=999&CN=999&VL=1&CM=9&CL=FRE

8. The delegation would like to thank 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 visit.

2. Political context and main political developments since Congress Recommendation 180 (2005).

2.1 International context and relations with neighbours

9. The Netherlands are an important player in the international scene, and is considered worldwide as an advanced democracy. It was one of the founding countries of the Council of Europe. It occupies an advanced position in most international rankings in the domain of GDP per capita, human well-being and institutional transparency.

2.2 Internal political context

10.The Netherlands are a constitutional monarchy with a parliamentary government. The head of State is King Willem-Alexander, following the Abdication of former Queen Beatrix (30 April 2013). The legislative power resides exclusively at the State level, and it is composed of two chambers, the Senate and House of Representatives (*Staten Generaal)*.

11. The last general elections were held in 2012. As a result of those elections, the People´s Party for Freedom and Democracy (VVD) obtained 41 seats (out of 150) in the House of Representatives. The Labour Party obtained 38 seats in the House of Representatives. Consequently, the two parties formed a coalition called the "2nd Rutte cabinet". The Prime Minister is Mr Rutte (VVD party). It should be underlined that the fact of having a coalition cabinet is not a crisis or a compromise solution, but a traditional and distinguishing feature of the Dutch political system.

2.3 Previous reports and recommendations

12. The first monitoring visit on the situation of local and regional democracy in the Netherlands took place in 1999. It resulted in the adoption of Recommendation 55 (1999) and Resolution 77 (1999). The 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.

13. 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.

3. Honouring of obligations and commitments: basic features of local authorities

3.1 Legislative developments

14. The Netherlands is a unitary country, endowed with administrative decentralisation. The sub-state levels of government are formed by the provinces (*provincies*) and the municipalities (*gemeenten*). These authorities are considered to be public legal entities that act through their governing bodies and they are dealt with by the Dutch Constitution (*Grondwet voor het Koninkrijk der Nederlanden*), under Chapter VII, entitled "Provinces, Municipalities, Waterboards and other public bodies" (Articles 123 to 136). Accordingly, local self-government is a constitutional issue, and any major modification of the present constitutional scheme would imply a complex amendment procedure involving a constitutional revision, followed by dissolution and re-election of the Lower House, and promulgation of the amendment with at least two thirds of the votes in both Houses (Art. 137 of the Constitution).

5 Debated and approved by the Chamber of Local Authorities on 8 November 2005 and adopted by the Standing Committee of the Congress on 9 November 2005 (see doc. CPL (12) 11, draft recommendation presented by K. Smith (United Kingdom, L, SOC), rapporteur).

15. Each territorial sub-state authority is governed by a separate piece of national legislation (Article 123 of the Constitution). The provinces are regulated by the Provinces Act (*Provinciewet*) and the municipalities by the Municipalities Act (*Gemeentewet*). Both laws date back to the 19th century but they have undergone frequent modifications. In recent times, the most important of such amendments were performed by the "Dualisation" reform, in 2002-2003, which amended several sections of both statutes (see *infra*).

16. Other statutes also regulate different aspects of local and regional democracy or are applicable to local authorities, such as: (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*).

3.2 Local self-government: basic features of municipalities[6]

17. There are 12 provinces in the Netherlands, with a surface area between 1420 and 5740 km² and a population between 361.000 and 3.452.000. The number of municipalities, around 1000 in 1945, has diminished to 408 (May 2013 figures). Only 12 municipalities have less than 5000 inhabitants, which is a fair basis for an efficient local administration. The Netherlands have a total population of 16.828.996 (Nov. 2013[7]) persons and an area of 41,528 km² (18.41% water[8]), with a population density of 4889 inhabitants per km², which raises planning, ecology, economy and other policy issues and inevitably triggers the need for cooperation among the municipalities.

3.2.1 Institutional arrangements and devolution of competences

Basic organisation

18. Article 132 of the Constitution establishes that the organisation of municipalities, and the composition and powers of their administrative organs will be regulated by an Act of Parliament. The representative governing body at municipal level is the Municipal Council (*Gemeenteraad* or *Raad*), while the municipality's executive organs are the Board of Mayor and Aldermen (College van *Burgemeester en Wethouders*) and the Mayor (*Burgemeester*). The whole municipal organisation has been reformed by the notion of "Dualisation", an approach introduced in the Municipalities Act by the "Act on Dualisation" which came into force in March 2002[10] Dualisation essentially refers to the separation of the municipal council and the municipal executive. This is achieved through separating the composition, functions and powers of the council and the executive.

a. Representative bodies: the Municipal Council

19. The representative governing body at the municipal level is the Municipal Council (*Gemeenteraad* or *Raad*). The council "represents the entire population of the municipality" (Article 7 of the Municipalities Act). Municipal councils are composed of members directly elected, in regular local elections that are held every four years, by the local residents having the Dutch nationality or other local residents not having that nationality but fulfilling certain requisites (Article 130 of the Constitution), such as having to reside in the Netherlands for at least five years before the elections. The electoral system is proportional. The duration of a municipal council is four years. Its members are not to be bound by a mandate or instructions when casting their votes (Article 129 para. 6 of the Constitution and Article 27of the Municipalities Act). The number of municipal councillors is proportional with a city´s population, ranking from 9 to 45. Council members remain in office for 4 years.

6 On the specific features of provinces, see section 3.4 below.
7 http://www.cbs.nl/en-GB/menu/cijfers/default.htm
8 http://www.holland.com
9 Ibid.
10 Act of 28 February, Staatsblad 2002, 111 and 112.

20. The Act on Dualisation rearranged the allocation of powers between the council and the executive board. As academics have described this legal development, "since the Act on Dualisation of the municipal administration came into force, the legislative power in municipalities has been assigned to the council, as have been the powers to set general policy and to control the executive board. The council establishes the General Local Regulation (APV) and other important local regulations, ordinances or by-laws. It also sets the budget as well as the annual account. It establishes general policies in a broad range of areas, such as transportation, social welfare, health, education, economy, environment, housing and spatial planning, and decides on major issues such as changes of municipal borders, inter-municipal cooperation and major investments. The council can also delegate part of its own competences to other governing bodies".[11]

21. The council is the body for political representation *par excellence*. Publicity of council sessions is a constitutional requirement (Article 125 para.1 of the Constitution). The Municipalities Act replicates this rule (Article 23 para.1).

b. Executive organs

22. According to Article 125 para. 1 of the Constitution: "The provinces and municipalities shall be headed by provincial and municipal councils respectively. Their meetings shall be public except in cases provided for by act of parliament."

23. The municipality's executive organ is the Board of Mayor and Aldermen (*College* van *Burgemeester en Wethouders*). The Municipalities Act provides that "the mayor and aldermen jointly constitute the municipal executive" (Article 34 para.1)

i. The Board of Mayor and Aldermen

24. The aldermen are nominated by the council and their number cannot exceed 20% of the number of members of the council (Article 36 of the Municipalities Act). Furthermore, aldermen cannot simultaneously be councillors (which was possible before the Dualisation Act). Administrative powers are concentrated in the hands of the municipal executive, while the council is responsible for outlining the local authority's policy and monitoring its implementation.

25. The executive is accountable to the council, which is to establish a code of conduct for aldermen (Article 41c of the Municipalities Act). Furthermore, the aldermen receive remuneration for their services, paid by the municipality and arranged by or pursuant to an Order in Council. As a rule, the Board holds the executive governing powers of the local authority, and they may delegate the execution of their own decisions to commissions.

ii. The Mayor

26. The mayor is the foremost official representative[12] of the municipality and also the chair of both the council (Article. 9 of the Municipalities Act) and of the executive (Article 34 para.1 of the Municipalities Act). Furthermore, the mayor is vested with a power to "catalyse" the work of the executive by determining the date and place of the municipal executives meetings (Article 53 of the Municipalities Act) and to "promote the unity of municipal executive policy" (art. 53a). The mayor serves a six-year term, which is renewable without limits.

27. Mayors are vested with a large number of executive competences including the duty to implement the policies, plans and guidelines approved by the council or by the college of mayor and aldermen. As chief of the police forces, they take care of the public order and activities carried out in public spaces and are responsible for management and regulation in local emergency situations, etc. (Articles 175-6 of the Municipalities Act).

11 Ine Van Haaren-Dresens: "Local government in the Netherlands". In: *Local government in the member states of the European Union: a comparative legal perspective* (Angel-Manuel MORENO, editor). Madrid, 2012, p. 464.
12 Article. 171 of the Municipalities Act.

28. In the Netherlands, mayors are not elected directly, either by the local residents or by the council. Currently, Article 131 of the Constitution states that “The King’s Commissioners and the mayors shall be appointed by Royal Decree”, and Article 61 of the Municipalities Act provides that “the mayor is to be appointed for a period of six years by Royal Decree on the recommendation of Our Minister” (and that “the mayor can be reappointed for a period of six years by Royal Decree at the recommendation of Our Minister”, Article 61a, para. 1). Therefore, besides the council (elected by the citizens) and the aldermen elected by the council, the local administration is determined by an element of hierarchic appointment at least at the top. This feature is rooted in an old tradition dating back to the Constitution of 1815.

29. The procedure of appointment of the mayors is of essential importance, and it has been largely discussed in the last decades, for instance, in the 1999 Congress monitoring report (mentioned *supra*). The Municipalities Act, modified accordingly (see Article 61), now regulates a large involvement of the council in the appointment procedure. Later, in 2001, an amendment modified the Municipalities Act and the Provinces Act increased the decisional power of the council in the appointment of the mayor.

30. It must be noted that even if, formally, there is an “appointment” by the King, in practice, the mayor is appointed from among candidates “selected” or “identified” by the council. The usual procedure is as follows: whenever the position of mayor is vacant, the council draws the desired profile that the new mayor should have (for instance, previous experience in similar positions, prior successful management projects, etc.). The vacancy is publicised and different applicants compete for the job. A confidential committee is then selected from the municipal council. The committee is responsible for assessing the candidates. The confidential committee reports on the candidates to the council and to the King´s Commissioner. The confidential committee then selects two candidates who are put forward to the “higher” authorities on a prioritised list (in exceptional cases, just one). The council’s recommendation is sent to the minister. The minister decides on the proposal but, in principle, the council’s recommendation is always accepted by the minister who can only deviate from this recommendation on reasoned and meaningful grounds.

Competences

31. Dutch municipalities enjoy many competences which they exercise in the different sectors of governmental action (environment, housing, social programs, traffic, buildings, culture and leisure facilities, social services, etc.) as provided for by the relevant sectoral laws and regulations enacted by the central powers. Apart from adjudicatory powers, municipalities are also endowed with certain planning powers, for instance in the domain of urban development and planning (although the municipal plans must respect and fit in the provincial plans). Municipal councils can also approve, with due respect to the national laws, bye-laws and local ordinances for different purposes such as setting up organisational structures, the operation and collection of local taxes, regulation of private or business activities within the municipal territory, etc. Apart from “own” or autonomous competences, municipalities also discharge a fair amount of duties under “medebewind” (co-governance), a feature of Dutch local self-government whereby local and regional governments and other public authorities carry out tasks and make regulations as required by higher authorities (the central government, most of the time).

3.2.2 Territorial issues

32. The non-European territories of the Netherlands consist of some Caribbean islands (Bonaire, Sint Eustatius and Saba) which at present have the status of “special municipalities” (BES islands). In addition, the island of Curaçao and the (half) island of St. Maarten became (in October 2010) an “autonomous country” that keeps a special status and qualified relations with the Netherlands, as the Island of Aruba already had in 1986. These overseas territories are the only remaining parts of the Old Dutch Empire. They enjoy a specific and deep autonomy, but in some of them independence movements are strong and produce controversy.

3.2.3 Relations between central and local authorities

33. The three levels of territorial government entertain a complex set of relations, according to the applicable laws and regulations such as cooperation, coordination, mutual assistance, supervision and control, etc. Specific legal documents govern these relations. A first "Intergovernmental relations Code" was concluded between the Government, the IPO and the VNG on 9 November 2004. A new version of this code was again approved in January 2013.

34.Inter-administrative relations receive a great deal of political attention in the Netherlands. The consultative division of the Dutch Council of State (*Raad van State*) periodically produces a report on these relations, pursuant to section 15, subsection 2 of the Council of State Act, at the request of the government. These reports present a general description of such relations, illustrated by specific examples, and provide recommendations and remarks.

35. The second of such reports ("Decentralised where possible, centralised where necessary") included several recommendations to the central government. From the perspective of local autonomy the most important were the following ones:

- to involve representatives from the provincial and municipal authorities in the preparation of decentralisation operations;
- the basic principle of decentralisation should in future be that any task should be "decentralised unless centralisation is the only possibility", thus advocating clearly for the subsidiarity principle;
- to avoid allocating specific powers to line ministers in respect of specific field of action;
- to introduce decentralisation legislation in stages and avoid unduly detailed regulation whenever possible.

36. The last periodic report released so far by the Council of State is "Report III" ("It can be done better: intergovernmental relations re-examined") This report has triggered an official response from the Ministry of the Interior and Kingdom Relations (*Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, h*ereinafter, "BZK") and a joint reaction by the IPO, the VNG and the Union of Waterboards (UvW), addressed to the members of the Senate and the House of Representatives.[13] Among other issues, this official reaction from the local stakeholders focused on four points:

- development of inter-administrative relations (local stakeholders suggest a further development of those relations and claim that the inter-administrative relations have not improved in recent years while the financial relations deteriorated);
- the Code on Inter-administrative relations, 2013 (local leaders claim that the central government has not fulfilled, in certain cases, the duty to consult them, as mentioned in the Code);
- decentralisation (decentralisation processes are taking place too fast, and without allocating the necessary financial resources to local authorities, thus affecting negatively the autonomy of municipalities and provinces);
- administrative organisation (the local leaders challenge the "economies of scale" argument, used by the central government to decide the decentralisation. In certain cases, competences are transferred from the local to the regional level, even when, in reality, such a move costs more).

13 Réaction de l´IPO, de l´UvW et de VNG au troisième examen périodique du Conseil d´Etat (date: 25 April 2013).

3.2.4 Status of the capital city

37. Formally, under the Constitution, Amsterdam is the capital city of the Netherlands. In practice, however, the official seats of the two chambers of Parliament (*Staten Generaal*), of the Departments of the national government, and of the Council of State (*Raad van State*) are located in The Hague, where foreign diplomatic delegations are also based. This situation has a purely historical explanation. Apart from this peculiar situation, Amsterdam (contrary to several European capitals) does not enjoy a specific legal status as a capital city in matters of internal organisation, taxation, finance, etc. Moreover, there is no "historical" claim of Amsterdam to have such a special status.

38. The City of Amsterdam is run by the City Council, by the college of Aldermen and by the Mayor, as any other Dutch city. In the last municipal elections (held in 2010), the PvdA got 15 seats in the city Council, the VVD 8 seats, the Green-Left 7 seats, the D66 Party 7 seats, the Socialist Party 3 seats, the CDA 2 seats; the Red Amsterdam, Trots op Nederland and the Party for the Animals each obtained one seat. The mayor of Amsterdam does not enjoy any special prerogatives or powers when compared to a regular city mayor. Amsterdam has no separate status in respect of financial aspects either. It is subject to the Municipalities Act and the BBv (Provinces and Municipalities, Budgets and Accounts) Decree. The next election will take place in March 2014.

39. However, Amsterdam has also some particular features, naturally triggered by the fact of being a big city with supra-municipal impact, due to a long tradition of sub-municipal districts for governing the city (*stadsdelen*). Amsterdam is divided into seven districts: Stadsdeel West, Stadsdeel Noord, Stadsdeel Oost, Stadsdeel Zuidoost, Stadsdeel Centrum, Stadsdeel Zuid and Stadsdeel Nieuw-West. Each district has extensive independent powers, their own budget and their own civil servants. Each city district has its own decentralised offices (*Stadsdeelkantoren*).

40. The Congress delegation's attention was drawn to the possible negative effects that future political and legal developments might have on this organisational arrangement, because the current national cabinet has made a strong pledge in favour of reducing the administrative layers and streamlining the governmental structure. As a matter of fact, in February 2013, the Dutch Upper House approved the removal of authority from municipalities to establish sub-municipalities. Only Amsterdam and Rotterdam have sub-municipalities. The Mayor and Aldermen of Amsterdam have seen this initiative as a restriction of local autonomy. The proposal could also be viewed as a contravention of the formal statutory provisions concerning the autonomy of local administrative bodies, and as an infringement on the right to settle internal housekeeping. It will still be possible to appoint the so-called "administrative committees", but these bodies will in practice have fewer powers and tasks.[14]

41. The second particular feature of Amsterdam has to do with the fact that it forms a complex settlement, intertwined by several neighbouring municipalities. Therefore, a number of issues must be tackled at metropolitan level: spatial planning, accessibility and mobility, economic policy, preservation of landscape, etc. Therefore, a relevant aspect of the specific situation of Amsterdam has to do with its metropolitan area: this refers to the geographical space around Amsterdam, made up of 35 municipalities. Different schemes for cooperation have been set up in this space. First and foremost is the "Amsterdam Metropolitan Area" itself, a form of specific internal organisation that has been set up to manage affairs, services and governmental activities affecting Amsterdam and the group of neighbouring cities, including Almere, Amstelveen and Haarlemmermeer. This area has a population of over 2 million inhabitants. Second, there are different schemes for cooperation between the municipality of Amsterdam and the surrounding municipalities: the "City region" (for matters of traffic and transport, youth care, distribution of living space); the "Safety region" (for issues of police, accidents and disasters), and the "Labour market" region. The city region is formed by 16 municipalities, the Safety region by 6, and the Labour Market region by 9 municipalities. The 35 municipalities also work on an informal level. On the other hand, the "Expatcenter" (a "one-stop-shop service for international companies and highly skilled migrants") is a joint initiative of Amsterdam and the cities of Almere, Amstelveen and Haarlemmermeer.

14 Letter of the Deputy Mayor of the City of Amsterdam of 15 May 2013.

42. Amsterdam has also formed an alliance for mutual cooperation and advancement of mutual interests (the “G4” alliance) with the other three biggest cities in the Netherlands (Utrecht, Rotterdam and The Hague).

43. In the field of finances, the representatives of the Municipality of Amsterdam have informed the Rapporteurs that, at present, they don´t have specific financial problems and are rather satisfied with the amount granted to the city by the Municipal Fund. Amsterdam receives transfers from the Municipality Fund just like any other city, but its population and size are duly taken into consideration. Given that there is no special tax collected only in Amsterdam, the city officials considered that they were in a good position as compared to other major cities.

44. However, the landscape is not without clouds. For instance, in 2015, Amsterdam expects (as do all municipalities in the Netherlands) to see a massive increase in the burden of its social tasks due to the decentralisation process concerning several social assistance programs currently managed by the central government, which will be transferred to municipalities. At the same time, the transfer of tasks and responsibilities will be accompanied by major cutbacks, and the municipality will have to adapt its operation to new requirements. In short, the municipality will have to carry out many more tasks for (far) less money: “efficiency” and “effectiveness” are the key words in the new scenario. This will be case for the “Exceptional Medical Expenses Act” (hereinafter “AWBZ”), where the transfer of responsibilities will come along with substantial reductions in funding. The same goes for the decentralisation of the “Participation program”, where the reduction in funding (as compared as to the current funding) will amount to roughly 80 million euros in 2014.

45. Another social program that will be decentralised is the “youth care” program. Currently, municipalities are responsible for preventive youth policy, but starting from 1 January 2015, Amsterdam (like other municipalities) will also be made responsible for youth care, youth protection, youth probation, youth mental health care, immigrant youth policy and the extraordinary medical expenses functions for care supervision and short-term accommodation - in short, for all youth support services. Amsterdam, like other municipalities, will also become responsible for organising long-term care in residential areas, close to the residents (supervision of nursing care). Amsterdam has a budget of approximately 365 million euros per year for supervision, care, domestic support and accommodation and transport.

46. The impact of all these plans for Amsterdam is currently difficult to evaluate. Whatever happens, between 2013 and 2016, Amsterdam will have to save more than 400 million euros. Consequently, the whole financial scenario is uncertain and gives rise to concern on the part of local politicians.

3.3 Analysis of the situation of local democracy in light of the European Charter on Local Self-Government on an article by article basis.

This analysis is based on the last recommendation.

47. The following analysis is mainly bound to ascertain the situation of local democracy on the basis of developments that have happened in the Netherlands since the last Congress monitoring procedure, which was carried out in 2005.

3.3.1. Articles 2 and 3: Principle and concept of local self-government

Article 2 – Constitutional and legal foundation for local self-government
The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 2: Legal recognition of local self-government

48. In the Netherlands, the principle of local self-government is not explicitly or openly recognised either in the Constitution or in the applicable domestic legislation (Municipalities Act). An attentive reading of both legal texts (at least the English version of them) reveals that they do not use the words "local self-government", "local autonomy" or any other similar terminology. As for what concerns the Constitution, the opening article of Chapter 7 (Article 123) does not include a general proclamation of local autonomy or self-government (as is the case in other European constitutions).[15] This section provides that "provinces and municipalities may be dissolved by an Act of Parliament", which is a rather unusual and forceful way to open up the constitutional regulation of local and regional authorities in domestic constitutions. Neither the subsequent articles of Chapter 7 nor the Municipalities Act (which regulates extensively all important organic, operational and procedural aspects of the working of municipalities) include the words "local autonomy", "local self-government", "local self-administration" or "local free administration". In short, there is no "programmatic" set of initial provisions, such as those that can be found in other domestic legislations on local government.

49. However, this does not mean that the Dutch legal system ignores the principle or the concept of local autonomy. Article 124 para.1 of the Constitution 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 recognises, in an implicit manner, that provinces and municipalities have the power to regulate and administer their own internal affairs. Indeed, local self-government is enshrined in the national constitutional tradition and is an essential part of the Dutch political landscape. In this sense, it has been written that "Local authorities' powers are not attributed to them by the Constitution or the legislature: the Constitution simply recognises the competences they already had before the State existed. This is the foundation for local autonomy in the Netherlands. This autonomy can be characterized as the discretionary responsibility to govern, with both legislative and executive powers, the municipal or the provincial "household". At present, the "household" is the sphere of public interest that a province or a municipality can oversee".[16]

50. In addition, the Dutch constitution (Article 124 para.2) also foresees that local authorities may be required "to provide regulation and administration" by an Act of Parliament or by the public authorities of a higher public body. This crucial concept in Dutch public law is called "*medebewind*" and will be examined infra.

51. Local self-government is thus recognised in the domestic and constitutional traditions, as an inherent part of the governmental landscape, but there is no "open" or "explicit" recognition of that concept. There is no explicit guarantee of local self-government either in the Constitution or in the key statute on municipalities; the actual scope, degree and extension of local self-government in the Netherlands is entirely attributed to regular legislation. Consequently, there is a risk that political considerations of the moment could – through legislation – severely restrict or reduce the intensity or extension of the autonomy enjoyed by provinces and municipalities, up to the potential stage of making it an almost unrecognisable notion (in the light of the most common Western European standards in the matter).

52. This feature has another indirect consequence: since there is no constitutional proclamation of a given/precise content of local autonomy, it is impossible to trigger legal challenges against statutes or regulations approved by the central government that could potentially make an attempt on local autonomy. This topic will be further discussed infra.

53. 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.

15 See, for instance, art. 137, Spanish Constitution.
16 Ine Van Haaren-Dresens: "*Local government…*". op. cit. p. 475.

Article 3: Concept of local self-government

Article 3 – Concept of local self-government	
1	Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2	This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 3.1: Scope of local self-government

54. The main question that must be addressed under this heading is whether, in the present situation, Dutch municipalities do regulate and manage a "substantial share of public affairs under their own responsibility and in the interests of the local population". This provision requires an assessment which takes into account the rather "subjective" and relative nature of the concept of "a substantial" share of public affairs", since there is no official or universal way of measuring that substantiality. The question must be tackled having in mind the historical evolution, the culture and the constitutional traditions of the country at stake.

55. Dutch laws and regulations entrust municipalities with a series of competences and powers that can be depicted as "fair" or "reasonable" in the light of the "unitary" constitutional characterisation of the country (although, of course, improvements could be made). The Congress delegation did not hear any substantial or recurrent claim from local representatives that the present local competences were either insufficient or non-substantial. As a matter of fact, most interlocutors seemed satisfied by the current situation on this point. It must be remembered that, in recent years, the central government has performed several decentralisation processes in favour of municipalities and provinces. What is more, a new and massive decentralisation process is under way at present. Leaving aside the question whether this arrangement is properly funded, this process will attribute to municipalities another significant share of public affairs and responsibilities, in fields that are highly sensitive for local residents.

56. In conclusion, the Rapporteurs consider that the scope of local self-government in the Netherlands can be defined as "mild" or "moderate", in comparison with other structures throughout Europe. However, the situation is consistent with the national culture and constitutional traditions of the country. Therefore, it can be said that the requirements of Article 3 para.1 of the Charter are satisfied by the present legal and constitutional situation in the Netherlands.

Article 3.2: Councils and mayors

Municipal Councils

57. The rapporteurs would call to mind that there is a governmental project consisting in reducing the number of municipal council members.[17] In total, roughly 1500 councillors are concerned nationwide. The government has provided several reasons for this initiative: to correct the unintended side-effect of dualisation in 2002, whereby municipal councils were expanded by the number of council members who had previously been appointed as aldermen; to make savings and to strengthen appropriate representation.[18] At present, this type of initiative is also taking place in other European countries (Greece, Spain, etc.).

58. The government's proposal has been accepted by the VNG on the provise that the income generated thereby is used for professionalisation. Against the background of the transfer of three decentralisation programmes (youth, care, and Exceptional Medical Expenses Act, AWBZ) to municipalities, the importance of professionalisation is expected to increase further. There is no guarantee, however, that this will take place. On the other hand, other interlocutors expressed their concern and their disapproval of the measure, which they think was unjustified since most local

17 Legislative proposal by Mr Heijnen of the Labour Party (PvdA), supported by the Cabinet.
18 *Latest developments in the Netherlands in the field of government and administration*. Document written by the Ministry of the Interior and Kingdom relations on April 8, 2013 and forwarded to the Congress, page 7.

councillors devote a lot of time to their job for which they are not “paid”. The Rapporteurs have been informed since then that this proposal was rejected by the Senate in July 2013.

Mayors

59. The fact that Dutch mayors are neither directly elected by the local residents nor by the municipal council is a well-known feature of local democracy in the Netherlands. As the Municipalities Act puts it in its Article 61: “The mayor is to be appointed for a period of six years by Royal Decree on the recommendation of Our Minister” (the Minister of the Interior and Kingdom Relations). Following the amendments to the Municipalities Act in 2001, the municipal councils now fulfil a clear role in choosing the new mayor. This has proved to be an effective system, according to local leaders.

60. The issue of the appointment of mayors was discussed in depth by the 2005 Monitoring report (Part II, paragraphs 11-27). At that time, two bills had been prepared and submitted to the House of Representatives. One bill (*Tweede Kamer der Staten-Generaal*, *Vergaderjaar* 2004-2005, *Wet verkiezing burgemeester*, nr. 29865) concerned the election of the mayor which would be held in the first round at the same time as the election of the council; the second bill (*Tweede Kamer der Staaten-General*, *Vergaderjaar* 2004-2005, *Wet introductie gekozen burgemeester*, nr. 29864) contained changes in the municipal law consequent to the introduction of the directly elected mayor. However, those bills were eventually not approved by the legislature.

61. Since no substantial changes have happened since that date, it does not seem necessary to repeat what was said in the last monitoring Report. However, the question remains as to the necessity to revisit the traditional Dutch arrangement for the appointment of mayors complies with the letter and spirit of Article 3 para.3 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”. These last words naturally raise the question whether a regular Dutch mayor (“executive organ” under Article 3 para.3) can be considered to be responsible to the Municipal council. This would mean not only that mayors have to inform and “respond” for their management to councils, but whether councils can dismiss mayors and finalise their term of office in cases of loss of confidence or bad political communication.

62. The reply to both questions must be positive, in the light of the applicable provisions of the controlling statute in the field, namely the Municipalities Act. Certainly, Dutch mayors have an institutional profile that is unique in comparative Law. In the Netherlands, mayors cannot be depicted as independent managers, although they have their own profile and duties, independent from the council (they even can seek the annulment of a council decision before the Minister of the Interior). Under the Municipalities Act, it is evident that there is a clear relation of “dependence” of mayors with respect to councils. This can be seen in different aspects of their mandate, and even for what concerns their continuance in office.

63. In this sense, the Municipalities Act provides that “the mayor is to receive remuneration from the municipality regulated by, or pursuant to, an Order adopted in Council”(art. 66.1); that “the council is to enact a code of conduct for the mayor” (art. 69.2); that the mayor is obliged to live in the municipality, and that only the council can lift that obligation (art. 71.2); that, “by means of a bye-law, the council can grant the mayor the power temporarily to have groups of persons specified by the mayor detained at a location specified by the mayor” (art. 154a). The key provision in terms of the political responsibility of the mayor is Article 61b.2 of the Municipalities Act, which states that “if a seriously impaired relationship should exist between the mayor and the council, the council can send a recommendation for dismissal to Our Minister through the intervention of the King’s Commissioner” (art. 61b.2), a recommendation which is usually followed. Therefore, it is clear that the council can terminate the duties of the mayor, and there is here a clear “responsibility”, on political or personal competence ground.

64. During the visit, the Congress delegation asked local leaders about this topic. The general understanding was that the present system of appointing mayors fits the Netherlands, and that the influence of the town council in "selecting" the mayor is considered sufficient. On the other hand some attempts to introduce "democracy" ingredients in the process of nominating mayors proved to be unsuccessful: in 2001, provision was made in the law for municipal councils to be able to hold a consultative referendum among their residents prior to issuing the government with a recommendation for the vacancy of the mayor. Since that date, only eight referenda have been held, and the actual rate of participation was very low. The rapporteurs did not find or hear claims in the sense that the system should be changed towards a direct election of the mayor. In the Netherlands, given its long history of coalitions, negotiations and compromise, we expect a mayor to be able to rise above individual party politics and take on rather the role of mediator. In general, the current system is seen as a reasonable one, consistent with the national tradition and culture. On the other hand, no significant claim or movement in favour of the direct election of mayors was detected by the Congress delegation, although a noteworthy recent initiative has crystallised in this field.

65. The House of Representatives member Mr Schouw (D66 Party) has submitted a legislative proposal aimed at amending the Constitution, so that the manner of appointment for mayors and Kings Commissioners should be regulated by Act of Parliament instead of by the Constitution. This proposal of "de-constitutionalising" the way mayors are appointed is backed by the present Cabinet in its Coalition Agreement.[19] It remains to be seen whether this bill will manage to get through the legislative process.

3.3.2. Article 4: Scope of local self-government

Article 4 – Scope of local self-government	
1	The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2	Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3	Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
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.

66. Although Dutch municipalities discharge many powers and responsibilities in several domains of local life, it should be pointed out that 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.

67. As a general public law principle, governmental responsibilities should be exercised by the authority that can do so most appropriately. In accordance with this idea, the Minister of the Interior is compelled by law, as it were, to encourage decentralisation, and any measure proposed to make certain matters part of central government or provincial policy are to be taken only if the matters in question cannot be efficiently and effectively attended to by the municipal authorities (Article 117, Municipalities Act). As a

19 *Latest developments in The Netherlands in the field of government and administration*. Document written by the Ministry of the Interior and Kingdom relations on April 8, 2013 and forwarded to the Congress, page 8.

matter of fact, the 2004/05 Inter-governmental Relations Code encompassed the principle "if possible local, if necessary centrally".

68. Therefore, responsibilities may be allocated to higher-tier bodies only if this is required for reasons of efficiency and economy.[20] In principle, if the State wishes to allocate a responsibility to a higher-tier body, the legislature must justify why that responsibility cannot be exercised by a lower body.

69. With respect to the fullness, comprehensiveness and exclusiveness of responsibilities, autonomous responsibilities and competences of municipalities in the Netherlands can be considered full, comprehensive and exclusive, while it should also be noted that public authorities of the higher tier supervise the decisions of authorities of the lower tier. This form of control can have a substantial impact on local and regional authorities, as it includes the supervision of autonomous activities, in terms of both their legality and their expediency.

70. In addition to what can be called "proper" or "autonomous" competences, the Dutch constitution (Article 124 para.2) also foresees that local authorities may be required "to provide regulation and administration" by an Act of Parliament or by public authorities of a higher public body (this crucial concept in Dutch public law is, as already mentioned, called "*medebewind*". When a local authority acts under a scheme of *Medebewind*, its autonomy and capacity to take decision is much more reduced as compared to "autonomous" competences. Not to forget that, under "*medebewind*", municipalities are "required" (that is, obliged) to provide a given service, to discharge a certain competence that is deeply regulated by the central authority. Therefore, municipalities lack the very essential choice of deciding whether to act or not in a given area, and how to do so. Moreover, the Constitution even provides for specific rules "in the event of non-compliance in matters of regulation and administration required under art. 124, paragraph 2".

71. A good example of this "*medebewind*"-type of municipal tasks is the issuance of passports to local residents, a duty that municipalities certainly discharge, but in doing so they must restrict themselves to apply literally the laws, regulations and instructions approved by the central government. As scholars have put it, in most of these cases, "there is no margin for policy-making, but simply the obligation for the mechanical application of the legislation passed by the higher body".[21] Using a French administrative-law concept, one could say that, in the *medebewind* regime, municipalities behave as "indirect administration" of the State agencies.

72. Certain local leaders met by the Congress delegation expressed their concerns that in recent times the number and importance of tasks to be accomplished under "*medebewind*" have increased sharply. It is clear that (from the perspective of local self-government) there is a certain tension between "autonomous" powers and "*medebewind*" activities: the more tasks municipalities are required to perform under "*medebewind*", the smaller local autonomy will be.

73. Finally, Article 4 para 6 of the Charter provides that "local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly". On this matter, see, infra.

74. In conclusion, three basic remarks may be formulated in respect of the requirements of art. 4, of the Charter:

75. On the one hand, the number and importance of powers and competences enjoyed at present by Dutch municipalities are generally regarded as "fair" or "reasonable" by local leaders and representatives in the Netherlands. Nothing would support the idea that municipalities are not really a "key" and vigorous actor of public life.

20 Arts. 115 of the Province Act and 117 of the Municipality Act.
21 Ine Van Haaren–Dresens: "Local government…".op. cit, p. 465.

76. On the other hand, the same stakeholders complain that in recent times the number of tasks that municipalities are required to perform under "*medebewind*" schemes has increased sharply, reducing the autonomy enjoyed previously.

77. Finally, the Dutch public law system incorporates an implicit principle in favour of decentralisation and subsidiarity, whose actual implementation corresponds to the central administration (through the Minister of the Interior). This general clause is not an empty word, but has produced in the past (and is producing at present) precise and concrete decentralisation processes.

3.3.3 Article 5: Protection of boundaries

Article 5 – Protection of local authority boundaries
Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

78. The Dutch constitution provides that the "revision to provincial and municipal boundaries shall be regulated by an Act of Parliament" (Article 123 para.2). The Municipalities Act does not include specific provisions on the matter, but a specific statute deals with the matter: the "*Wet algemene regels herindeling*" (*Wet Arhi*). Thus, a modification of municipal boundaries takes place 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. As a rule, a re-definition of municipal boundaries can only take place by an Act voted in Parliament, on the initiative of the local bodies concerned. The Minister of the interior is in charge of implementing such act. The Law on the change or local authorities' territories provides for the necessary rules on the election of the new local representative bodies, and fixes the situation of the local authorities' staff affected by the changes.[22]

79. In this sense, it is convenient to stress that the process of mergers of municipalities has been a prominent feature in the Dutch territorial landscape. The process started in the 19th century and has continued for decades at a steady pace. Governmental officials told the Congress Delegation that, the process of mergers of municipalities cannot be considered to be definitively closed and that any further merger or fusion would be welcome by the government. However, the merger process must be decided by the municipalities themselves, even though the government may set the necessary financial incentives for such outcome. Merging municipalities is therefore a voluntary initiative of the local bodies concerned.

80. In the light of the precedent considerations, the requirements of Article 5 of the Charter can be considered to be complied with by the current legal scheme.

3.3.4 Article 6: Administrative structures

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities	
1	Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2	The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

81. Dutch municipalities enjoy a fair degree of autonomy in the field of internal organisation, which is commonly considered to be a part of local government. Within the limits of State legislation, the council and the executive board may decide to establish a wide array of different committees and internal structures:

22 Council of Europe: *Structure et fonctionnement de la démocratie local et régionale aux Pays-Bas. Situation en 2008*. Page 6.

a. On the one hand, the council can set up council committees that can prepare the council's decision-making and consult with the municipal executive or the mayor. The mayor and aldermen are not to be members of such a council committee. The composition of the said council committee must ensure that there is a balanced representation of the parties represented in the council. The chairman of the said committee must be a council member (Article 82, Municipalities Act).

b. On the other hand, the council, the municipal executive or the mayor can set up governing committees that can discharge powers which have been delegated to them by the council, by the municipal executive or by the mayor (Article 83, Municipalities Act).

c. Thirdly, "the council, the municipal executive or the mayor can set up committees other than those referred" in the precedent letters (Article 84, Municipalities Act).

d. Fourth, the council, the municipal executive and the mayor can jointly set up one or more submunicipalities, with a submunicipal authority ruling it. This has to be done by way of council bye-law (Article 87, Municipalities Act). These bodies consist of a submunicipal council and an executive committee to which the representation of a considerable portion of the interests of this submunicipality is assigned and in respect of which the (main) municipal council may even delegate the power to lay down generally binding regulations with respect to that submunicipality. Submunicipal council members are directly elected by the residents of the submunicipality concerned, who are entitled to vote in the election of council members. The cities where municipal structures are most developed are Rotterdam and Amsterdam.

82. The auditing is another sphere where municipalities can adopt autonomous organisational decisions. The Municipalities Act imposes on municipalities the duty to have a specific organ to discharge that duty, but municipalities are free to choose any of the following options: (a) to set a local "audit office" (b) to establish an "audit office function"; (c) if the first option is adopted, to decide whether the municipality should have its own, specific audit office, or whether several municipalities should set up a joint audit office.

83. As regards Article 6 para.2 of the Charter, Dutch municipalities have the power and the autonomy to recruit high-quality staff on the basis of merit and competence. There is no centralised system for recruitment, in the sense of a nationwide, French-type territorial public service. The Municipalities Act lays down specific provisions dealing with the municipal secretary (Articles 100-106) and the municipal clerk (Articles 107-107e). The municipal executive is to regulate the replacement of the municipal secretary, but the council is to appoint the municipal clerk, and suspend and dismiss that officer.

84. Consequently, the current Dutch system meets the requirements enshrined in Article. 6 of the Charter.

3.3.5 Articles 7 and 8: Exercising responsibilities and government supervision

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.

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

85. Under Dutch law, the conditions of office of local elected representatives do provide for the free exercise of their functions. This point has never been put into question by facts or reality, as the Netherlands is an advanced democratic country.

86. As for the financial compensation of local representatives, it should be recalled that the Netherlands made a declaration in their instrument of acceptance deposited on 20 March 1991 to the effect that "it shall not consider itself bound by the provisions of Article 7 paragraph 2 of the Charter" and are consequently not bound by it. Council members receive no salary but an allowance for their work. The position of council member is a part-time position and is considered as an "additional" position, the allowance being a compensation for missed income arising from the main position of the councillor. The level of the allowance depends on the number of residents of the municipality (Decree on the Legal Status for Council and Committee Members).

87. According to the Municipalities Act, council members are to receive a payment for their activities and an allowance for their expenses in a bye-law to be enacted by the council (Article 95). In addition, and insofar as they are not members of the council or the municipal executive, the members of a committee, of a submunicipal council or of an executive committee of a submunicipality as set up by the council, the municipal executive or the mayor, are to receive an allowance enacted by a bye-law from the council (Article 96). Even if these provisions were not ratified by the Netherlands it is interesting to underline that consequently it appears that the situation in this respect would have been considered as satisfactory in the light of the above mentioned (not ratified) provisions. According to the local representatives met by the Congress delegation, the amount of allowances may be considered "fair" or "reasonable".

88. As regards Article 7 para.3 of the Charter, the Municipalities Act describes in detail what functions and activities are incompatible with the holding of local elective offices (arts. 15 for council members, 36b for aldermen) and even with the holding of the position of mayor (Article 69). Therefore, this section of the Charter is fully respected in Dutch local government law.

Article 8: administrative supervision

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.

89. In Dutch constitutional and political tradition, supervision of municipal activities by the province and the central bodies is seen as a part of the system of self-government, a feature that counterchecks local autonomy in order to ensure the unity of the country. This supervision is strictly regulated by the law, and can only be enforced under the law. Thus, the Dutch constitution itself provides for such supervision: Article 132 establishes that the supervision of the municipal administrative organs "shall be regulated by Act of Parliament" and that decisions taken by a municipality´s organs "shall be subject to prior supervision only in cases specified by or pursuant to an Act of Parliament".

90. At this point, it should be recalled that the Netherlands made a declaration in their instrument of acceptance (1991) that "it shall not consider itself bound by the provisions of Article8 paragraph 2 of the Charter". In any case, the Dutch system excludes any form of "a priori" or "ex ante" intergovernmental supervision of local decisions, plans and ordinances by the central authorities, except in those exceptional cases provided for by the law.[23] Intergovernmental supervision can be implemented "ex post", and local decisions may be quashed only by royal decree and on the ground that they conflict with the law or the public interest (Article 132 of the Constitution).

91. Articles 259 to 281 of the Municipalities Act regulate the cases where State authorities are to approve, suspend or to annul municipal decisions.

23 See: Direction de l´Initiative parlementaire et des délégations-Sénat : *Note sur le contrôle de la légalité des actes des collectivités territoriales*. September 2011, pp. 23-25.

a. Prior approval: Decisions of municipal authorities can be subject to approval only in cases determined by Act of Parliament or a provincial bye-law pursuant to Act of Parliament (Article 259.1). This approval must be given by royal decree. To obtain such approval, the local decision is to be sent to the Minister of the Interior. This Minister makes a recommendation to grant or to withhold the approval sought. The Council of State must be consulted, too. The minister takes the final decision, on the basis of the report of the Council of State (art. 266, the Municipalities Act).

b. Suspension and reversal of local decisions: An order or a non-written decision adopted by the municipal administration may be reversed by Royal Decree, on the grounds of legality or for the protection of the general interest. In this case, state control is triggered by a demand of the mayor. The Municipalities Act describes the procedure. If the mayor is of the opinion that a decision should be considered for reversal, within two days of it coming to his or her attention, he or she is to inform the Minister of the Interior through the Provincial Executive. Simultaneously, the mayor is to inform the body which took the decision (the council or the executive board), and, if necessary, the body that has been charged with its implementation. Within one week of the date of the mayor's notification, the Provincial Executive is to forward the documents, together with its opinion, to the Minister of the Interior. Then, the said minister is to make a recommendation for the suspension of the contested local decision. The Royal Decree to suspend, withdraw or extend the suspension of a decision or to reverse it, is to be published in the Bulletin of Acts, Orders and Decrees. When a royal decree has been granted, the municipal authority is to make a new decision on the matter that formed the subject of the reversed decision, taking the Royal Decree into account when doing so.

92. The Generic Supervision Act provides for other types of control or supervision of municipal activities, focusing on enforcement issues.

93. Consequently, the system indeed provides for "a posteriori" controls, which are discharged either by the Minister of the Interior or by another sectoral agency. Those controls cannot be based on expediency grounds, but only on reasons of legality, or for the protection of the public interest. In reality, and according to the information facilitated to the Congress delegation, the actual application of such controls is very rare.

94. The laws and regulations on local budgeting and financial relations (*Financiële Verhoudingswet*) and The Municipalities Act also allow for a specific sort of intergovernmental intervention in that, in general, provinces monitor the budgets of municipalities. When a municipality's budget becomes unbalanced, the province can intensify its control mechanisms, which means that it approves of the proposed expenditures of the municipal boards. When the province's measures do not suffice to improve the municipality's financial situation, there is an article in that law that makes it possible that the municipality gets extra funding from the Municipality Fund.

95. Beyond this verification, there are other forms of more subtle supervision: for instance, the "Nerpe Act" (compliance with European rules by public entities) allows for fines imposed by the EU on the State to be collected from the municipalities. Other indirect controls are introduced when the State imposes performance or efficiency standards on the work of municipalities. However, this cannot be depicted as a true "expediency control".

3.3.6 Article 9: Financial resources

Article 9 – Financial resources of local authorities

1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.

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

3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

5	The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6	Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7	As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8	For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

96. The financial resources of local authorities are a hot topic and an important source of controversy in the Netherlands. It is important to note that the Netherlands made a declaration in their instrument of acceptance (1991) that "it shall not consider itself bound by the provisions of Article 9 paragraph 5 of the Charter".

97. In purely legal terms, Article 132 para.2 of the Dutch Constitution provides that: "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", and the Municipalities Act include extensive provisions on municipal finances (Articles 186- 266). Furthermore, the *Financiële Verhoudingswet* regulates the intergovernmental financial relations.

98. As noted supra, this aspect of the Dutch system of local government was analysed *in extenso* on the occasion of the last Congress monitoring report on the Netherlands (2005). Recommendation 180 (2005)[24] on the state of local finances in the Netherlands Congress mainly discussed the situation of local finances in the Netherlands, based also on Recommendation 79 (2000) on the financial resources of local authorities. In that document, the Congress noted that the local taxation system of the Netherlands was characterised by the fact that 83% of the local fiscal revenue derived from the real estate tax, that the part of the fiscal local income covered only 8.8% of the municipal revenue and that the local taxes covered only 1.1% of the GDP of the country. In the prospect of – by that time – announced amendments on the financial scheme for local authorities in the Netherlands, the Congress recommended the Dutch authorities that they change the provisions of the draft law so as to grant the municipalities an alternative possibility of levying local taxes; furthermore, it called on competent Dutch authorities to consider not following up on the proposals, which would infringe upon Article 9 of the Charter. It also recommended that the Dutch government continue to seek, in co-operation with the Association of the Netherlands Municipalities, ways and means to grant the municipalities by law, as from 2007, an alternative source of local fiscal revenue (simultaneously with the reform of the real estate tax) at least of the same volume as the current real estate tax of which they will have the freedom to determine the rate.

99. In a nutshell, the present situation of local finances (both municipalities and provinces) in the Netherlands may be presented as follows:

i. Sources of funding

100. Local bodies receive budget from different sources:

a) Local taxes and other income (for example from land development),
b) Lump-sum payment from the Government funds (*algemene uitkering*, Municipality fund and Provincial fund),
c) Allocated payments from the Government funds (*integratie- and decentralisatieuitkering*),
d) Specific transfers from line departments (*specifieke uitkering*),
e) The sale of property and assets.

24 Debated and approved by the Chamber of Local Authorities on 8 November 2005 and adopted by the Standing Committee of the Congress on 9 November 2005 (see doc. CPL (12) 11, draft recommendation presented by K. Smith (United Kingdom, L, SOC), rapporteur).

101. they see fit, where part of that will be used to execute tasks that are set by law. The Government does not formulate binding instructions or guidelines for decentralised governments for setting priorities, programmes or policies, nor does any other Cabinet member. The local democratic process is responsible for the planning and the budget. The Ministry of Interior guides the local governments executing their tasks. In the case of specific transfers (letter "d", above) local authorities have the obligation to provide *ex-post* information on the allocation of those payments, to make sure that the money was spent on the goal as described by the competent State department. If not, the money is claimed back from the local authority.

102. Municipalities also get some subsidies from Provinces: for example, subsidies for special initiatives that are also in the province´s interest. Those are for investment in roads and public transport stops, or making plans for touristic places. On the other hand, local authorities can ask for loans from the private sector and form public debt, and the prior approval of the Ministry of Finance is not required.

103. At least twice a year, there is a formal meeting (called "*Bofv*") between the Government and the representatives of local authorities on financial issues. The allocation of financial resources by municipalities is not part of these meetings, since decentralised governments are free to spend most of their resources, as long as the local democratic process supports it.

104. Articles 189 and 193 of the Municipalities Law and the Provincial Law respectively state that the municipal and provincial boards need to make sure there is a balanced budget, but that the board can deviate from this when it can make a case that a balanced budget will be achieved within the next three years. In law, there is no limit to the deficit that can occur under these rules. It is up to the financial supervisor of the municipality or of the province to determine what is an acceptable deficit, given the situation. If it is not plausible to assume that a balanced budget will be achieved within the following years, the supervisor will intensify its control.

ii. Some fresh data on the financial situation of local authorities[25]

105. Figures from 2012 on the different sources of income for municipalities (local taxes, charges and fees, transfers, etc.):

- Local taxes: 8.3 billion euros,
- Other income: 12.3 billion euros,
- Specific transfers from line departments (specifieke uitkering): 10.1 billion euros,
- Municipality fund (*Gemeentefonds*): 18.5 billion euros.

106. Proportion of transfers granted to municipalities by the State which are free and "earmarked" (pattern of evolution for these figures in the last five years).

Municipalities

	2008	2009	2010	2011	2012
Free (total amount in billion euros)	16.2	17.7	18.4	18.6	18.5
Free (%)	55%	58%	61%	63%	65%
Earmarked (total amount in billion euros)	13.0	12.6	11.9	10.9	10.1
Earmarked (%)	45%	42%	39%	37%	35%

Note: these figures only refer to sources identified under letter "c" and "d" supra, since only those are transfers granted by the State.

iii. Official position of the Ministry of Finance on the subject of local authorities finance.[26]

107. The fact that the main source of funding for Dutch local authorities comes from central government transfers is not new. A major source of income is the lump sum payment that municipalities receive from the Municipality Fund. Local authorities have complete autonomy as to how they spent this income this income as well as income generated by local taxes. This situation is seen as satisfactory by the present Cabinet. On the other hand, there are no measures taken to increase the tax base or the taxing power of local authorities.

25 Provided in written response by the Ministry of Finance on demand of the Congress Monitoring Delegation.
26 Written replies forwarded to the Congress Monitoring Delegation, May 2013.

108. The Dutch government supports the view that it has to fulfil the pledge, made in 2005, to increase the Municipal Fund, in order to compensate municipalities for the loss of income produced by the reform of the real estate local tax. As a matter of fact, in 2006 an amount of approximately 1 billion euros was added to the Municipality fund to compensate the loss of income.

109. The law that describes intergovernmental financial relations ('*Financiële Verhoudingswet'*) provides for a safety net for municipalities that have an unbalanced budget (Article 12 of that statute).

110. The State's contribution to the funds is linked to the development of central government's spending. Because of the economic crisis, there have been budget cuts in the central government budget. Therefore, the State's contribution to the Funds has been cut as well.[27]

111. For 2012, the volume of debt of local governments amounted to 53.8 billion euros. One of the measures that are being taken is that local government will be obliged to keep their deposits at an account at the Ministry of Finance (treasury banking).

112. During the consultation process, the Minister of the Interior and Kingdom Relations informed the Rapporteurs that a letter had been sent in October 2013 to the House of Representatives on the subject of the "Design of the Constituent Fund for the Social Domain", concerning the sub-fund for the financial compensation of the future decentralised responsibilities of municipalities in the social area. For this new responsibility, a specific budget without separate divisions, aimed at inceasing participation in society, was considered appropriate. With this "design", the Cabinet sought for a balance between, on the one hand, the policy freedom for municipalities to provide local services and on the other, the measures necessary for its successful implementation during the first transitional years.

iv. Conclusions

113. Although the Congress Recommendation 180 (2005) did not have the desired impact on national authorities and the situation remained unchanged. Its findings and general assessment of the insufficiency of the "own resources" of municipalities are still valid today. In the last years, the legal context has not been amended in order to increase the local taxes or "own resources" in general. Although Dutch municipalities do levy some taxes, they are mainly funded by a central government-run program, called "Municipalities Fund", which transfers the amount granted to every municipality according to a complex set of criteria, data and coefficients (more than fifty).

114. Local leaders concurred on this view, and they claim that their own income remains limited; that they are not fully compensated for the execution of central government tasks in the framework of joint authority; that, if the sustainable government finance white paper is approved, local governments will be hindered in making investments and using their reserves. Since they will no longer be able to place their assets with a bank of their choice, but only with the central government (treasury) banks, they will get reduced returns because the interest rate paid by central government is considerably lower than that offered by the banks. Therefore, and according to local representatives, the Law on the Public Finance (Hof) and the '*Schatkistbankieren*' (financing by the Treasury) have shown so far examples of what should be avoided. Furthermore, in the Council of State's publication "Inter-administrative Relations Re-evaluated" (page 32), it is stated that "the Department has also evaluated two legislative proposals (the Sustainable Public Finances Act and Treasury Banking) which, according to the IPO, VNG and UvW, are being considered jointly as an attempt to limit the powers of decentralised authorities to manage and allocate their general resources for themselves".

115. All the local politicians met by the Congress delegation stressed the view that the local taxation reform has limited the income of municipalities, since tenants of houses do not pay the general property tax. Furthermore, municipalities also complain about the fact that the Municipalities Fund has suffered subsequent reductions over the years. The Minister of the Interior and Kingdom Relations refers to the report of Staat van Bestuur 2012 (Administration report) that stipulates that the size of the Municipalities Fund has increased in recent years.[28] Municipalities in the Netherlands claim that their tasks have increased which mean a relative loss of fund. As regard the next decentralisation processes, concerning

27 In the matter of budgetary shortfall, the 2013 National Budget expects a budgetary shortfall for the Netherlands of 16.7 billion euros, amounting to 2.7% of the GDP. Municipalities, provinces and water boards also have a budgetary shortfall. According to the revised EMU survey by the CBS in august 2013, the estimated EMU deficit among municipalities consists of 3.7 billion euros(0.60% GDP).

28 Page 35, Table 22 http://rijksoverheid.nl/documenten-en-publicaties/rapporten/2012/10/25/staat-van-het-bestuur.html

social programs, will be performed by the central government, but the State is not going to give the municipalities the same amount of money that is spent by State agencies on those programs. In the government's understanding, because municipalities will be responsible for implementing those programs, the fact that they are the administration closest to the citizens will produce in itself some savings and "efficiency gains. Therefore, it is expected that municipalities will be able to implement those programs at a lesser cost. These efficiency gains and savings have been calculated unilaterally by the central government, without sufficient analysis and municipalities complain about the fact that they cannot provide these programs, at the same quality level, with far less money than before.

3.3.7 Article 10: Right to associate

Article 10 – Local authorities' right to associate	
1	Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2	The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3	Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

– Paragraph 1

116. The size, population density and the spatial distribution of local authorities constitutes a more than favourable environment for inter-municipal cooperation in the Netherlands. In fact, the importance of inter-municipal cooperation (which is explicitly provided for by Article 134 of the Constitution) has grown over the last decades, especially on grounds of efficiency and getting economies of scale. Inter-municipal cooperation is used in many areas of local life: housing, town planning, environmental policy, fire prevention, sports and cultural facilities, waste collection and treatment, etc. The most important statute in the field is the "Act on Cooperation" (*Wet gemeenschappelijke regelingen*) of 1984.

117. Inter-municipal cooperation can be channelled through four basic types of bodies: the "public body" (*openbaar lichaam*), the "mutual organ" (*gemeenschappelijk orgaan*), the "central municipality" (*centrumgemeente*), and the "functional commission" (*functionele commissie*). The specific case of inter-municipal cooperation in a "metropolitan" area has been described above for Amsterdam. Municipalities can also establish private-Law entities such as companies, associations and foundations.

– Paragraph 2

118. The situation of the "right to associate" requirements of Article 10 para.2 of the Charter in the Netherlands can only deserve a highly positive assessment. In the country there are two powerful, well-structured and active associations: one for municipalities (*Vereniging van Nederlandse Gemeenten*, VNG) and another of Provinces (*Interprovinciaal Overleg*, IPO) and one of the waterboards(UvW). They have provided much appreciated assistance to the Congress delegation before, during and after the visit. In both cases, the national associations are well-inclusive and representative of local authorities (at municipal or provincial scale). They play an active role in the representation, defence and advancement of the local interest, and they negotiate on a regular basis with the central government on major developments affecting the local interest. This is also favoured by the pattern of inter-governmental negotiation, which is deeply rooted in Dutch political culture. For instance, and as noted above, in 2004 the central government and the representatives of the sub-national authorities drew up an "inter-governmental relations code" (BZK, 2005). Other negotiated positions have followed in subsequent years: for instance, in June 2010 the Dutch local and regional authorities, in conjunction with the Dutch Government, adopted in The Hague a joint position paper on the future of the European cohesion policy.[29]

119. Therefore, the VNG and IPO are fairly recognised as the right interlocutors on territorial governance by the central government, and negotiations are conducted on a regular and fruitful basis.

29 See: Response of the Dutch provinces and municipalities on the conclusions of the 5th cohesion report. 31 January 2011.

– Paragraph 3

120. The geographical location of the Netherlands, the historical tradition and the general co-operative culture of the country provide an optimal ground for municipal co-operation in a trans-frontier context. Furthermore, and as noted at point 1, the Netherlands have signed and ratified the applicable conventions and protocol on the matter (namely, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, and its protocols). Therefore, Dutch local authorities are entitled to co-operate with their counterparts in other States. The international cooperation agency of the VNG (VNG international) entertains a huge amount of international co-operation projects, literally around the world.[30] In conclusion, the rapporteurs consider that the requirements of Article 10 of the Charter are presently satisfied by the Dutch system.

3.3.8 Article 11: Legal protection of local governments

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.

121. Legal protection of local government in the Netherlands presents a rather unsatisfactory situation, although it should be recalled that the Netherlands made a declaration in their instrument of acceptance (1991) that "it shall not consider itself bound by the provisions of Article 11 of the Charter" and are not bound by it.

122. At present, the Dutch legal system does not grant local authorities any specific right to recourse to a judicial remedy in order to secure the free exercise of their powers. There is no specific legal proceeding or remedy that might be used in order to challenge an Act of Parliament that would clearly reduce or disregard the essential content of local autonomy. Moreover, the Netherlands has no Constitutional court, and there are no signs that such a court will be established in the near future. Therefore, there is no legal remedy against a statute that could potentially restrict the scope or the depth of local autonomy in the Netherlands, that is, there are no legal proceedings for enforcing autonomy. However, during the consultation process, the Minister of the Interior and Kingdom Relations stressed that municipalities can challenge any decision that they wish to contest, to the administrative courts (Council of State for the second instance) and also to civil law jurisdictions.

123. The VNG contends that, in 2007, the VNG called for the establishment of a Constitutional Court in its first government report from the Aartsen committee but never received a reply from the government. [31] The government's comment on this was that they never officially received the report. During the consultation process the VNG informed the rapporteurs that this rapport has been offered to the Minister of the Interior and Kingdom Relations during the annual VNG Congress in 2007 and during his speech the former Minister reacted to this booklet.

124. On the other hand, there is no specific "*locus standi*" for local authorities in the administrative court system, where they could use local autonomy as a legal argument to challenge a measure, decision or regulation approved by the central government. It is true that municipalities (and provinces) may sue the central government using the system of remedies provided by civil law. A municipality may act in the civil court as an "affected person", a situation that is seen as sufficient and satisfactory by the Council of State. However, the rapporteurs find it difficult to share this view, in the light of the letter and the spirit of Article 11 of the Charter.

125. Moreover, in recent times new statutory developments have exacerbated this situation. For instance, in recent years the Parliament approved the Crisis and Recovery Act (CRA) which aims to promote economic growth and accelerate decision-making processes (construction of roads, housing, wind farms, etc.). All the projects mentioned in its annexes are subject to a "fast track" approval procedure, where access to court is restricted on ground of administrative efficiency. Namely, Article 1 para.4 of the CRA aims at restricting access to administrative courts, by denying local and regional authorities the right to judicial review by the administrative courts in connection with the approval procedure of such projects. It states that a legal entity established pursuant to public law and not being

30 http://www.vng-international.nl/home.html
31 Written reply by the VNG to the questions formulated by the Congress Delegation.

part of the central government (for instance, a municipality), may only appeal against an approval decision, if the decision is addressed to that legal entity. Technically, this produces the practical result that a municipality cannot challenge in the administrative courts a decision adopted by a central agency by which approval is granted to an infrastructure project that seriously affects that municipality (because it is not the formal "addressee" of the decision).

126. In the light of the precedent considerations, the rapporteurs draw attention again (see supra § 116) that 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, 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.

3.3.9 Article 12: Undertakings – reservations formulated by States, if any

Article 12 – Undertakings

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

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

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

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

127. As noted above in various paragraphs, the Instrument of Ratification of the Charter by the Netherlands was deposited on 20 March 1991. The Charter entered into force in respect to the Netherlands on 1 July 1991.The said Instrument contained several "declarations" to different articles of the Charter, on the ground of Article 12, paragraph 2 of the Charter: namely, that the Netherlands will not consider itself bound by the following provisions:

- Article 7, paragraph 2;
- Article 8, paragraph 2;
- Article 9, paragraph 5;
- Article 11 of the Charter.

128. 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 Kingdom in Europe (on the ground of Article 16 of the Charter).[32]

129. During the consultation process, the Minister of the Interior and Kingdom Relations informed the rapporteurs that, for the time being, it is still not possible to ratify the above mentioned provisions.

130. On the other hand, and 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, the Netherlands filed the following "declaration": "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

32http://www.conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=122&CV=1&NA=&PO=999&CN=999&VL=1&CM=9&CL=FRE

the Netherlands, Dutch legislation is in accord with both the wording and the purport of Article 6, paragraph 2, of the Charter."

131. The rapporteurs were told that, at the time of the promulgation of the Charter Ratification Act, the government committed itself to try to ratify the other provisions where possible. In its third review of inter-administrative relations (see supra) the Council of State stated that the non-ratified provisions to the Charter were still not signed, and that the previous recommendations of the Congress had not been respected.

132. In consequence, this report would recommend the Dutch authorities to consider revisiting the pertinence of reviewing some of the declarations made at the time of ratification. For instance, the withdrawal of the declaration made in connection with Article 7 para.2 of the Charter should not represent a serious problem in the light of the present legal situation.

133. The same can be said in relation with Article 8 para.2, since the current system does, in practice, seem to satisfy the requirements of that provision. The withdrawal of the declaration made in respect of Article 11 represents more difficulties in the light of the above described situation, but Dutch authorities are warmly encouraged to introduce the appropriate changes in the present legal scheme so as to conform to that provision.

3.4. Regional democracy: the Reference Framework for Regional Democracy

134. At present, there are twelve provinces (*provincies*) in the Netherlands: Groningen, Fryslân, Drenthe, Overijssel, Gelderland, Flevoland, Utrecht, Noord-Holland, Zuid-Holland, Zeeland, Noord-Brabant and Limburg. The biggest province is Friesland, with a surface of 5740km2, while the smallest is Flevoland (1420 km2), which at the same time is most recently established (just 27 years ago). The most populated province is Zuid-Holland (3.461.000 inhabitants) while Flevoland is the least populated one (just 400.000 inhabitants). Provinces form the "intermediate" level of government, right between the municipalities and the State.

135. Before a careful examination of regional democracy is carried down below, an important question emerges as to the very existence of "regions" in the Netherlands, a question that needs to be clarified from the outset.

136. First of all, in the Netherlands the only sub-state legal territorial entities are the municipalities and the provinces. The question is, therefore, whether the provinces may be considered to be genuine "regions" or they are just second-tier "local authorities" (having a "supra-municipal" territory and sphere of competences). The latter situation is very common in Europe, where bodies called "provinces" or a similar name (Spain: *provincias*; France: *départements*; Italy/Portugal/Belgium: provinces, etc.) are in reality considered to be "local authorities" both by constitutional and statutory law. In the light of the present legal scheme, in the Netherlands (apparently) there are no "regions" as such, but "provinces": neither the Dutch Constitution nor the Law on Provinces (*Provincieswet*) uses the word "regions" or characterises the provinces as "regions". The Law does not identify the legal nature of the provinces, and the Constitution only recognises a pre-existing reality. Moreover, when the Netherlands ratified the Charter, it declared, based on Article 16 thereof, that the said Charter would be applicable "to municipalities and provinces", something which constitutes a hint or tip that Dutch authorities considered the provinces to be "local" in nature.

137. Secondly, while the word "municipality" has a clear and recognisable meaning in all European countries, the terminology "region" is not a state-of-the art concept, but loose notion, subject to nuances and different national approaches. For instance, several countries clearly have "regions" (within the meaning of The Reference Framework for Regional Democracy[33]) but do not even call them "regions": this is the case, among others, of Spain (*Comunidades Autónomas*), Germany (*Länder*), Austria (*Länder*), the United Kingdom, etc.

138. Thirdly, the Reference Framework for Regional Democracy (hereinafter, the Reference Framework) provides a concept for regions which are fully respected by Dutch provinces: they are territorial, administrative-governmental bodies, situated between municipalities and the State; they have their own competences and powers, namely in those domains singled out by the Reference Framework: regional development, land use planning, etc.; they possess a specific legal scheme and they enjoy a

33 Congress Resolution 299(2010).

separate system of financing; they have regulatory powers: they cannot certainly pass "statutes" but they can approve "regulations", which are legal rules, subordinated to Acts of Parliament and having binding effects on individuals and public bodies; there is certainly a "provincial identity", more developed in some provinces that in others. Finally, it should be recalled that Dutch provinces (contrary to what happens in some countries) are not "new", artificial or bureaucratic subdivisions of the territory decided by a pre-existing central government (as it happened with the "provinces" in Spain, Portugal, France, etc.), but they do enjoy a considerable historical tradition, for they triggered in the 17th century the very birth of the Dutch nation (the country was initially called the United Provinces) and formed a confederation which resulted in the present Netherlands.

139. In the Rapporteurs' opinion, in light of the above considerations, Dutch provinces may be considered as "regions" in the context of the Reference Framework.

3.5. Analysis of the situation of regional democracy in the light of the Reference Framework

140. As a preliminary remark, it should be said that the legal and institutional profile of provinces mirrors in many aspects that of the municipalities. Therefore, there is no need to perform at this point a comprehensive presentation of all legal features concerning the provinces, since many issues and aspects that have been analysed in the previous pages for municipalities are applicable, *mutatis mutandis*, to the provinces (for instance, "legal protection of self-government"). In this report, the rapporteurs wish to focus on the specificities of provinces

3.5.1 Constitutional recognition and applicable statutes

141. The Dutch constitution regulates provinces in the same chapter as municipalities (Articles 123 to 136), and several constitutional provisions are applicable to both types of authorities. In Dutch constitutional law, provinces are considered territorial, public legal entities, acting through their own organs. The density of constitutional regulation on provinces is light, and there is (as in the case of municipalities) a wide referral to parliamentary legislation: "the organisation of provinces, and the composition and powers of their administrative organs shall be regulated by Act of Parliament" (Article 132). The "organic law" on this issue is the Provinces Act (*Provinciewet*), which came into force the same day as the Municipalities Act: 1 January 1994.[34] Apart from that, a number of laws and regulations mentioned at point 3.1 are also applicable to provinces.

3.5.2 Organisation

142. 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*).

143. Provincial councils are composed of members directly elected through regular, direct elections that are held every four years (the next provincial elections are planned for spring 2015) by the residents in the province having the Dutch nationality, or other local residents not having that nationality but fulfilling certain requisites, such as having to reside in the Netherlands for at least five years before the elections. The electoral system is proportional. The duration of the provincial council is four years. The members of the provincial council are not to be bound by a mandate or instructions when casting their votes (Article 129 para. 6, Dutch Constitution). The number of provincial councillors is proportional to the province population and ranges from 39 in Flevoland and Zeeland to 55 in Zuid Holland, Noord-Holland, Noord Brabant and Gelderland. The main role of the provincial council is to lay down the general guidelines and policies of the province, and to control the execution of those policies as carried out by the Executive Board. After the provincial elections, the parties represented in the *Provinciale Staten* elect the Provincial Executive in each province, which usually have 5 or 6 members (while Noord-Brabant has 7). Finally, it should be stressed that the *Provinciale Staten* also elects the members of the Senate of the National Parliament on the first day of a new term. As it happens in France, this feature give provinces a specific "guarantee" that any legislative proposal concerning them will be considered "with due care" by the *Eerste Kamer* of Parliament.

34 Stb.1993, 668.

144. The most prominent political officer of the province is the King´s Commissioner (KC), whose institutional profile follows to some extent that of the Mayor (as presented supra). A specific feature of the KC´s is that the holder of the post combines four different roles: apart from being the chair of the Provincial Council and the chair of the executive board, the KC is also the representative of the government in the province and entertains relations with the municipalities of the province. In theory, the KC stands above the political parties and has more authority than power ("*auctoritas*"rather than "*potestas*"), that is, the KC holds formal power, but the job is more about guiding and advising. The real power remains with the council and the executive board of the province.

145. Like mayors, KCs are elected neither by the residents nor by the provincial council. In this sense, Article 131 of the Dutch Constitution states that "the King´s Commissioner shall be appointed by royal Decree". In practice and *de facto*, one can support the idea that the KC is "selected" by the Provincial Council, since it is common practice that the 'Crown'' (central government and the King) will not appoint another candidate than the one proposed by the council, and the King will not interfere in this procedure. As in the case of mayors, this matter has been the subject of some political and constitutional discussion, but at the end of the day, Dutch authorities have decided not to change the current system (as in the case of mayors, see supra). In its comments sent to the Congress Rapporteurs during the consultation process, the Minister of the Interior and Kingdom Relations indicated that "a legislative proposal (*Schouw*) was pending before the Parliament to de-constitutionalise the appointement procedure for mayors and King's Commissioners. The manner and procedure of appointment could then be regulated by means of an ordinary Act of Parliament. The Minister affirmed that the government supported this proposal".

3.5.3 Regional competences

146. As in the case of municipalities, neither the Constitution nor the *Provinciewet* include a more or less comprehensive set of competences for provinces. These are identified by the different laws and regulations covering the several sectors of governmental action. This means that there is no "inherent" or "constitutionally protected" hardcore of provincial competences, since they are totally dependent on the will of Parliament or the central government. At present, the main areas of competences for Dutch provinces are:

- Spatial planning and water management
- Regional mobility, regional accessibility and regional transport
- Regional economic development
- Energy
- Countryside matters, including agriculture and nature protection
- Cultural infrastructures, and conservation of monuments (listed buildings)
- Quality of public administration, which includes supervision of municipalities in case they neglect their statutory tasks or in case of financial mismanagement
- Infrastructures
- Youth (but in 2015 those competences will be transferred to municipalities).

147. In some areas of governmental activity, there is a certain overlap between "municipal" and "provincial" competences. In such cases, the line is drawn by considering that cities are autonomous within their borders, but when the activities have consequences outside their borders, the province has a domain of responsibility. The Congress delegation was informed that, at the moment, there is an ongoing discussion about a new division of tasks between national, regional and local governments to avoid duplication.

148. Regarding the "share" of provincial competences, as compared to state and municipal ones, provincial representatives the delegation met estimated in general that the share is small when compared to other European countries. The prominence of provinces in the management of public affairs is certainly weak, and far less important than the role of municipalities.[35] On the other hand, some provincial leaders expressed views that the degree of autonomy of provincial governments is "unacceptably low"; that the discretionary, financial and decisional space for the Dutch provinces is extremely small; and that decisions by provinces tend to be often overruled or ignored by both national and local governments.

35 According to provincial leaders, Dutch provinces manage relatively less government money than any other European country except Greece. In the Netherlands the ratio is 45% for the national government, 5% for provinces and 50% for municipalities. Source: Dick Berkhout, IPO meeting, Utrecht, 22 May 2013.

3.5.4 Relations with other sub-national territorial authorities. Involvement in the State decision-making process

149. Provinces hold regular relations with all municipalities in the province, both formal and informal. The formal relations might be classified under three headings: cooperation, assistance and supervision. For instance, in certain environmental issues (in regional planning above the municipal scope, in nature protection in which the province participates financially, etc.) some municipal decisions and measures are subject to the prior approval of the KC. On the other hand, the KC regularly visits each municipality in the province. The province cannot influence the decision-making of municipalities, and municipal authorities remain responsible for their own decisions. However, there is coordination and consultation in some sectors of governmental activities (such as spatial planning). Nevertheless, some provincial leaders claimed that the relation between the provinces and the municipalities is far from harmonious. Especially in some provinces there is a tendency by the major cities to ignore the province.

150. As regards the involvement of provinces in the State decision-making process, there are regular negotiations between the IPO and the central government. IPO represents the interests of the provinces (lobby) in the national debate and performs a rather similar role to that of the VNG, in the defence and promotion of provincial interests.

3.5.5 Supervision of provinces by State authorities

151. As noted supra, in the Dutch constitutional and political tradition, supervision of sub-state authorities by the "higher" tiers of government is considered to be a part of the system of self-government. Thus, central governmental supervision over provincial decisions, plans and activities are essentially subjected to the same supervision system applying to municipalities. Under the Constitution, the supervision of the provincial administrative organs by the central government "shall be regulated by Act of Parliament"; decisions taken by the provincial organs "shall be subject to prior supervision only in cases specified by or pursuant to an Act of Parliament"; and provincial decisions may be quashed only by royal decree and on the ground that they conflict with the law or the public interest" (Article 132).

152. These forms of control and supervision are regulated by the Provinces Act (Articles 253-274): the State may approve provincial decisions, suspend the effects of such decisions or annul those decisions. The system follows, to a great extent, the lines of the supervision system over municipalities (see supra). The role of the Mayor is here performed by the KC.

3.5.6 Finances

153. The provinces obtain funding from different sources:
- Local taxes and other income,
- Lump-sum payment from the Government funds (*algemene uitkering*, Provincial fund),
- Allocated payments from the Government funds (*integratie- and decentralisatieuitkering*),
- Specific transfers from line departments (*specifieke uitkering*),
- The sale of property and assets.

154. Some data will help understanding the overall financial situation of provinces[36]:

a. 2012 figures about the different sources of income for provinces (local taxes, charges and fees, transfers, etc.):
   - Local taxes: 1.5 billion euros,
   - Other income: 4.7 billion euros,
   - Specific transfers from line departments (*specifieke uitkering*): 1.8 billion euros,
   - Provincial fund (*Provinciefonds*): 1.7 billion euros.

36 Provided in written response by the Ministry of Finance on demand of the Congress Monitoring Delegation.

b. Proportion of transfers granted by the State which are free and "earmarked" (pattern of evolution for these figures in the last five years):

Year	2008	2009	2010	2011	2012
Free transfers(amount in billion euros)	1.2	1.3	1.5	1.3	1.7
Free transfers (in %)	36%	37%	38%	34%	49%
Earmarked transfers (amount in billion euros)	2.1	2.2	2.4	2.5	1.8
Earmarked transfers (in %)	64%	63%	62%	66%	51%

155. The provinces raise their own taxes and therefore have some autonomy. In reality, the autonomy of Dutch provinces in general is much reduced, because most financial means are received from the central government[37]. The opportunities for the provincial taxing powers are really small.

156. 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.

157. According to provincial representatives, the degree of autonomy of the provinces depends not only of legislation, but also on the actual possibilities of provinces to supply their own financial means. These possibilities are limited. A step forward could be the enlargement of the provincial tax prospects, but reality moves in the opposite direction, as the possibilities have recently been further limited. Moreover, the central government is considering additional measures to reduce the possibilities of provinces to decide what tasks they want to execute (the so-called 'closed household'). These measures can also imply the reduction of financial means, for example by further reducing the possibilities of imposing provincial taxes.

3.5.7 Final remarks and current issues

158. Currently, there is in The Netherlands a debate about the role and the very meaning of provinces in the country, and the entire level of the province seems to be under discussion. Different factors have triggered this debate: on the one hand, provinces have progressively lost competences and financial means to the municipalities advantage, as new responsibilities (and additional resources) have been put in their hands. On the other hand, the amalgamation of cities and the establishment of joint, inter-municipal structures have produced new, stronger and bigger municipal entities, with extended capabilities to tackle supra-municipal problems but at the same time questioning the very rationale of the provinces, at least in some areas. Against this background, two different developments are in the pipeline. Firstly, a new division of areas of responsibility between provinces and municipalities is taking place, due to the large scale of decentralisation in favour of municipalities. Secondly, the prospect of amalgamating several provinces.

159. At present there are governmental plans (driven by the Minister of the Interior) to merge some provinces (to begin with Noord-Holland, Utrecht and Flevoland) in order to create five subnational regions. These new bigger regions would replace the present twelve provinces. This proposal, however, has triggered the criticism of provincial leaders. They claim that the citizens are not convinced that this will bring new opportunities and chances for the areas concerned and that it is not clear what problems will be solved by the proposed merger. On the other hand, the provincial representatives understand

37 See: footnote 29.
38 Source: 'Nutsgelden' provincies 2013 - Financieel Dagblad d.d.13.03.2013

that the announced fusion would widen up the gap between provincial politicians and the citizens. They also question the cost-effectiveness and the expected value of such an operation. Moreover, they depict the proposal as not being a" bottom up" process, but a" top-down" approach from the central government. Finally, the "provincial identity" could be an obstacle for provincial amalgamations. Today, in particular the formation of 'new town' cities affects this identity, especially in rural areas. Therefore, the identity of the province and the emotional value of its inhabitants should be taken into consideration in drafting these proposals.

4. Conclusions and further steps of the monitoring procedure

4.1 Conclusions

160. In general, local and regional democracy in the Netherlands presents an overall positive situation, from the perspective of the Charter and the Reference Framework. There are however, various elements that are cause for concern.

161. As regards the very essence of local autonomy, one could argue that, the margin of discretion of sub-national authorities has been restricted by means of an ever-increasing regulation by the central, national legislative and executive powers. In the wake of a so-called "decentralisation", the central government is transferring further competences and services to local authorities, in selective fields, namely in the domain of social services. However, this is done in the framework of two considerations:

a. the same tasks will have to be accomplished by local authorities, but with less money. The reduction in money is equivalent to a so-called "efficiency gain", which has been calculated unilaterally by the central government;

b. in fulfilling these tasks, local authorities must follow the directives and guidelines approved by the central government (in terms of efficiency, etc.) that reduces their *de facto* discretion and transforms local authorities into simple "executors" of national legislation.

162. In the decentralisation programmes, financing and responsibilities are not in balance. In recent times, the implementation of autonomous and policy-based tasks by local government has become problematic due to cutbacks and reconsiderations. This capability will be placed under even further pressure as a result of the efficiency discount: a large number of decentralisation proposals will reduce the autonomy of municipalities; more compulsory tasks will have to be implemented, but these decentralisation processes are accompanied by insufficient financial resources for maintaining the same level of service.

163. The Congress delegation agrees with the Council of State (advisory division) in the general assessment of the current situation, as reflected in its third periodic report on the inter-administrative relations (graphically named "it can be done better"). The relevant paragraph deserves to be fully quoted, having in mind the high prestige of that body and the soundness of its opinions: "the scope for the sub-national authorities to pursue autonomous policy is being circumscribed and under pressure by the decentralisation operations. On the subject of funding, the management and disbursement of the general funds of sub-national authorities are subject to more and more constraints. As regards supervision, the Division notes that despite the changes to the legislation designed to revitalise generic supervision, specific powers (for State agencies) are also being expanded…the right of appeal for sub-national authorities has been limited … when legislation is being prepared the duty of consultation is regularly ignored…".

164. In short the rapporteurs would conclude as follows:

1. The principle of local and regional self-government as such should be clearly recognised in the Constitution or at least in the key statutes (Municipalities Act and Provinces Act).

2. The "autonomous" and "proper" competences of municipalities should be reinforced, and the tasks performed under the "*Medebewind*" system should be reduced.

3. The legal scheme on municipal and provincial finances should be amended, in order to grant local authorities more autonomy and more "own resources" in general (and, in particular, in the field of local taxation). The level of dependence on State transfers is unacceptably high.

4. The envisaged decentralisation processes, concerning social programs, should not take place without proper financial support. Dutch authorities should consider the transfer to municipalities of at least the same amount of funding that was allocated so far to the respective State agencies running the transferred programs.

5. At present, the Dutch legal system does not grant local authorities any specific right to recourse to a judicial remedy in order to secure the free exercise of their powers. Therefore, legislation should be amended in order to recognise local and regional authorities – through a specific remedy- the right to stand in court in order to protect their interests and the very essence of local and regional autonomy.

6. Dutch authorities would be invited to consider the pertinence of reviewing or withdrawing some of the declarations made at the time of ratification of the Charter.

7. The level of competences for provinces should be reinvigorated so that the decentralisation processes does not benefit municipalities to the detriment of provinces.

8. It may be appropriate to reconsider the consequences of this situation, when some provinces had the opportunity to sell their bonds of gas and energy companies, while others could not, because they had not such bonds. This led to an economic and financial gap between the two groups of provinces, which justify a review of the situation, in order to allow for all Dutch provinces to perform their competences and fully enjoy their autonomy with adequate resources.

9. Negotiation and inter-governmental dialogue between the State and local and regional authorities should be strengthened and take place at more frequent and meaningful intervals.

Appendix 1 - Human rights at local and regional level: information given to the Congress delegation during the visit

1. Human rights awareness and protection at local and regional level are very developed in the Netherlands. This may be seen in the domain of specific institutional arrangements, and in the existence of many awareness raising and support activities.

2. As regards institutional arrangements, Dutch local authorities are obliged by law to provide for an ombudsman or an "*ombuds*" committee. This obligation is enshrined in the Municipalities Act and in the Province Act. The jurisdiction of the ombudsman extends to cover the way in which all public governing bodies or their staff behave towards citizens. Municipal and provincial ombudsmen have jurisdiction only over complaints regarding their own municipality or province. Municipal and provincial councils may institute and nominate a local or a provincial ombudsman of their own, or they can do so together with other local bodies or join the ombudsman institution of another municipality. The Association of Dutch municipalities (VNG) has produced a model for local regulation of the ombudsman, which municipal councils can follow or use as the basis for a modified local regulation. In case municipalities institute an ombudsman jointly with other municipalities, or if they join an ombudsman institution of another municipality, the incumbent has jurisdiction over complaints concerning all cooperating municipalities. If local bodies do not choose any of these options, the independent National Ombudsman has *de jure* jurisdiction.

3. Therefore, all provinces, waterboards and municipalities have an ombudsman. The national Ombudsman, however, acts also as the local ombudsman for 298 out of 408 municipalities (73%). Besides the national Ombudsman, there are some 25-30 ombudsmen for the remaining 110 municipalities. Most of the municipalities have a joint ombudsman, such as the ombudsman for Amsterdam (embracing 7 municipalities). Therefore, one can safely say that the local authorities in the Netherlands constitute an important level for the protection of human rights and against maladministration, connected to the working of local authorities.

4. The National Ombudsman is appointed by the Lower House or House of Representatives of the National Parliament (*Staten-Generaal*). In making an appointment, the House takes into account, as it sees fit, a recommendation containing the names of at least three persons made after joined consultations by the vice-president of the Council of State, the president of the Supreme Court and the president of the Netherlands Court of Audit. There are no special majority requirements.

5. In the most narrow domain of the protection of self-government and how the Ombudsman can protect it, it is possible (according to the law) for municipalities and provinces to file a complaint to the national ombudsman against acts of State agencies or departments. However, this is not a frequent phenomenon.

6. As regards awareness rising and support activities for municipalities on human rights in the Netherlands, the VNG strongly supports human rights both within the delegation and within the VNG Committee on European and International affairs. Several important initiatives, carried out throughout the Netherlands, must be mentioned here:

a. In 2011, VNG partnered up with Amnesty International and the City of Utrecht for an informal inspiration meeting on the importance of human rights at local level in the framework of the European Local Democracy Week. To follow up, the VNG conducted a survey in 2012 amongst its members. As a result, VNG published a practical brochure about the importance of human rights for municipalities containing concrete examples, which was made public on 8 October 2012, at a second meeting on human rights in the City of Utrecht during the European Local Democracy Week.[39]

b. A partnership between members of the Dutch delegation to the Congress, the NGO "Amnesty", the Dutch Institute for Human Rights, the Ministry of Interior and other stakeholders was started in the same year.

39 http://www.vng.nl/files/vng/publicatie_goed_bezig_over_mensenrechten.pdf

c. In 2013, the following initiatives are planned:

– VNG network driver on human rights:
The VNG is setting up an informal network on human rights, in which elected officials can exchange views and information on issues related to human rights (first meeting scheduled for 11 October 2013).

– Exhibitions and workshops in municipalities:
The “Amnesty” has identified 11 strategic municipalities and will start working with these municipalities on an integrated approach towards human rights. Exhibitions and workshops will take place there.

– Briefings on human rights on sectoral policies are also planned in a number of municipal policy areas to offer concrete suggestions on topics such as public order and (social) security. The first briefing on citizenship and human rights will be presented in October 2013, on the occasion of the European Local Democracy Week.

The Minister of the Interior and Kingdom Relations underlined that the Netherlands, attach a great value to human rights at every level of government administration within the terms of personal responsibility of each party. The government considers it important that increasing numbers of Dutch municipalities should be developing specific human rights policy in collaboration with other parties (both nationally and internationally). One good example of this international cooperation is the intensive participation of the municipality of Utrecht in a research project by the EU Fundamental Rights Agency concerning the protection of human rights at the local level. To that end, Utrecht organised a conference in 2011 in partnership with the Association of Netherlands Municipalities (VNG). The outcome of the research project (‘joined-up governance’) will be a toolkit for protecting human rights at the local level; this is to be launched by the EU Fundamental Rights Agency in June 2013.

Appendix 2 – Programme of the Congress monitoring visit to the Netherlands (14-16 May 2013)

CONGRESS MONITORING VISIT TO THE NETHERLANDS
The Hague, Amsterdam, Gouda and Zoeterwoude (14 - 16 May 2013)

PROGRAMME

Congress delegation:

Rapporteurs:

Mr Artur TORRES PEREIRA	Rapporteur on local democracy Chamber of Local Authorities, EPP/CCE[40] Member of the Monitoring Committee of the Congress, President of the Municipal Assembly of Sousel (Portugal)
Mr Jean-Pierre LIOUVILLE	Rapporteur on regional democracy Chamber of Regions, SOC Member of the Monitoring Committee of the Congress, Vice-president of the Regional Council of Lorraine (France)

Expert:

Prof. Dr. Angel Manuel MORENO MOLINA	Consultant, Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress (Spain)

Congress Secretariat:

Ms Stéphanie POIREL	Secretary to the Monitoring Committee of the Congress

The working languages, for which interpretation was provided during the visit, were Dutch and French.

40 EPP/CCE: European People's party Group in the Congress
SOC: Socialist Group of the Congress

Tuesday, 14 May 2013, Amsterdam and The Hague

Meeting with the Deputy Mayor of Amsterdam:

- Ms Andree VAN ES, Deputy Mayor
- Mr Hugo Fernandes MENDES, Director of the City Policy Advice Department
- Drs Wouter VAN DER HEIJDE, Senior European Policy Advisor

Meeting with the Association of Netherlands Municipalities (VNG):

- Dhr. VAN DER TAK, Chair of the Committee on Administration and Safety and Mayor of Westland
- Dhr. BUDDENBERG, Chair of the Committee on Budgetary and Financial Affairs and Mayor of Pijnacker-Nootdorp
- Mr Jan Willem WECK, Member of the Board of Directors of VNG
- Ms Annemiek WISSINK, Director of European Affairs of VNG

- Ms Renske STEENBERGEN, Policy officer International Affairs, VNG

Meeting with the Dutch Delegation to the Congress:

- Ms Anne-Marie Engelbertha (Amy) KOOPMANSCHAP, President of the Dutch Delegation to the Congress and Mayor of Diemen
- Ms Jon HERMANS-VLOEDBELD, Mayor of Almelo
- Ms Luzette WAGENAAR-KROON, Mayor of Waterland
- Mr Jakob (Jos) WIENEN, Mayor of Katwijk
- Mr Johan VAN DEN HOUT, Deputy of the province de Noord-Brabant
- Mr Leen VERBEEK, Commissioner of the King of the Province Flevoland

Meeting with the Netherlands Association of Provinces (IPO):

- Ms Kitty ROOZEMOND, Director European Affairs

- Ms Gonnie VERBRUGGEN, Senior Policy Officer European Affairs, IPO

Wednesday, 15 May 2013, The Hague, Gouda and Zoeterwoude

Joint meeting with the National Ombudsman of The Netherlands, the Ombudsman for Children and the Municipal Ombudsman of The Hague:

- Dr Alex BRENNINKMEIJER, National Ombudsman of The Netherlands
- Mr Marc DULLAERT, the Ombudsman for Children, Deputy Ombudsman of the National Ombudsman of the Netherlands
- Mr Peter HESKES, the Municipal Ombudsman of The Hague
- Mr Jan PRINS, senior investigator at the Office of the National Ombudsman of the Netherlands

Meeting with representatives of the Ministry of Finance:

- Mr Frans WEEKERS, State Secretary for Finance

Meeting with representatives of the Municipality of Gouda:

- Mr Milo SCHOENMAKER, Mayor of Gouda, and members of the Municipal council
- Mr Teun HARDJONO, Councillor
- Mr Loes BAKKER, Municipality Secretary
- Mr Harry VAN BOVENE, Advisor Strategic Policy

Meeting with representatives of the Municipality of Zoeterwoude:

- Ms Liesbeth BLOEMEN, Mayor of Zoeterwoude and members of the Municipal council
- Mr C. DEN OUDEN, Alderman
- Mr T. DE GANS, Councilmember, Chairman of the Christian Democratic Party in the City Council
- Mr R. SCHOUTEN, Council member, Chairman of the local Progressive Party
- Ms M. VAN DIJK, public servant

Thursday, 16 May 2013, The Hague

Meeting with members of the Council of State of the Netherlands:

- Mr J.P.H. DONNER, Vice-President of the council of State, Chairman of the Advisory Division of the council of State
- Mr Wim DEETMAN, Member of the Council of State and the Advisory Division, Former Mayor of The Hague
- Mr Heine BULTEMA, Legal Advisor of the Legislation Department
- Ms Anna LOOF-DONKER, Legal Advisor of the Legislation Department

Lunch with Ms JORRITSMA, President of the Association of Netherlands Municipalities

Joint Meeting with Members of the Parliament:

- Mr Hans FRANKEN, President of the Dutch delegation to the Parliamentary Assembly of the Council of Europe, Member of the Senate
- Ms M. FOKKE, representative of PvdA
- Mr VAN DER LINDE, representative
- Dr P. OMTZIGT, representative of CDA
- Dr R. VAN RAAK, representative of SP
- Mr TAVERNE, representative of VVD

Meeting with representatives of the Ministry of the Interior and Kingdom Relations:

- Mr Gert-JAN BUITENDIJK, director General for governance and Kingdom relations, senior advisor on administrative and government affairs

Meeting with The Hague Audit Office:

- Mr W.R. de BOER , chair of the Utrecht Audit Office
- Dr G. HAGELSTEIN, member of the board of the Dutch Association of Audit Offices
- Ms M. SWARTE, secretary of the Hague Audit Office

Appendix 3 - Specific questions for the Ombudsman for Children

1. What are the complaints most commonly filed with the Ombudsman for Children?

Our top 5 fields in which complaints (1062 in total) were filed with the ombudsman for Children in 2012.

a) Youth Care (414)
Many complaints or signals considering out of home placement and children put under supervision of the youth care institutions' guardians.
Parents disagreeing with judge' decisions or those made by the guardian/youth care institution.
Children having problems with their guardian or with their out of home placement.

b) Education (197)
Stay at home children who want to go to school
Disagreement about schoolcurrricula
Disagreement about high school level
School climate (safety and state buildings are in)
Bullying
Quality teachers
School rules
School transport of pupils
Student loans from government and their free public transport access card.

c) Shared custody arrangements (after divorce) (158)

d) Refugees (68)

e) Health care (40)

Who made the complaint / reported a signal in 2012:

Parents	572
Children	129
Third person	126
Professional	109
Grandparents	73
Unknown	32
Brother/sister	12
Adolescent (18-23)	10
Total	**1063**

2. What are the most noticeable cases of "maladministration" detected by the Ombudsman for Children?

The four most significant contacts (complaints or signals) out of nine that have led to investigations or special interventions by the Ombudsman for children in 2012:

a) Juveniles taken into custody in police cells.

b) Local immigration Service and local Immigration police arrested a Turkish mother with her 10 year old child when they came to the local service to start a residence permit procedure.

c) For students without/in procedure for a Dutch residence permit, traineeships as part of education are impossible to arrange.

d) Mediation for a boy that youth care threatens to place out of home because of lack of schooling.

Main research topics 2013/ 2013:

Refugee children developing mental problems by dealing with long procedures and living in uncertainty.

Making the 'Special curator' known: a person appointed by a judge to help realising the child's best interests and the right to be heard in the cases where parents and/or guardian are unable or unwilling to do so.

You Rate It classification system (NICAM and BFC) developed to rate internet-films on international scale, received support from European Commissioner Mrs. N. Kroes.

Anti-bullying programs in schools: schools are required by law to use evidence based programs.

Stay at home children wanting - but unable - to go to school: reasons and solutions.

Dutch family reunification procedure: policy and practice.

Youth care transition from national to local government: effective local policies.
Poverty: local governmental policies
Prevention child maltreatment in municipalities.

Investigation procedure in youth care process.

Among other, the Ombudsman for Children has advised the Government on topics like the Adolescent Criminal Law Act and the New Youth Care Act.

3. Is the current crisis reducing the quality of child care services, or of the schooling system, as in other European countries? What about social services?

The ombudsman for children has not performed specific research on the effects of the crisis, nor has it received a substantial amount of complaints on this topic. However, the following (recent) developments in the Netherlands do effect children directly:

- Higher costs for parents using day-care facilities for their child(ren).
- Less governmental support parental budget.
- Monthly insurance costs have risen and greater share of that has become at-own-risk.
- Certain youth care therapies are out of basic insurance coverage.
- Timing: several family budget cuts together make it difficult to deal with them at the same time.

Current research on poverty shows results indicating that the crisis effects children in their daily life through poverty: in 2010, one in ten children (327.000 in total, Signals of Poverty, SCP 2012) were living in poverty. In 2012, this number had gone up to one in nine children (377.000 in total, Children's rights Monitor 2012, p.71).