

Local Self-Government in Cyprus

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Abstract This national report assesses the compliance of the Republic of Cyprus with the principles of local self-government enshrined in the European Charter of Local Self-Government, as ratified by the Republic except for Article 7 paragraph 2. The degree of compliance with the Charter is deduced by examining the extent to which the existing Constitutional and legislative provisions in combination with law in practice achieve the aims that the Charter seeks to achieve. The report suggests that the Republic of Cyprus has gone a long way towards implementing most of the Articles of the Charter, but there are still serious implementation issues to be resolved, including the absence of clear recognition of the principle of self-government in the Constitution and the national legislation, as well as the large extent of Government involvement in the administration of local affairs. There are important developments regarding the reform of local self-government in Cyprus. In particular, three main bills have been approved by the Council of Ministers and submitted to the House of Representatives in order to become laws, namely “The Municipalities Law of 2020”, “The Communities (Amending) Law of 2020” and the “The District Self-Government Organizations Law of 2019”. The said laws will increase the responsibilities and powers of the local authorities, which will become financially and administratively independent from the Central Government and they will be able to pursue a real policy in the local community.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Cyprus

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1 Introduction and history

The history of Cyprus evidences the existence of an evolving form of local organization and administration. The institution of local government was initially heavily influenced by colonialism, subsequently affected by the presence of two communities and recently shaped into today's modern local self-governance after the accession of the Republic of Cyprus in the European Union. The endowment of autonomy at the local level throughout the years has been gradual and the pressure for further liberalization of the administration of Municipalities and Communities is currently higher than ever, with the Congress of Local and Regional Authorities of the Council of Europe calling the Government of Cyprus to restrict the supervision of local authorities solely to measures of *ex post* control of legality. Discussions and consultations for the reform of local self-government in Cyprus have been ongoing for years and albeit consensus not having been reached to date, the need for the concession of more powers to local authorities and the consolidation of decision-making powers at the local self-government level are undoubtedly central elements of the proposed reforms. The aforesaid discussions and consultations, following the recommendations of the Congress of Local and Regional Authorities of the Council of Europe, resulted to the preparation of three main bills, namely "The Municipalities Law of 2020", "The Communities (Amending) Law of 2020" and the "The District Self-Government Organizations Law of 2019", which are expected to become laws soon.

The initial foundations of local self-government have been set upon the conquest of the island of Cyprus by the Ptolemies in the 4th century BC. Before the Ptolemaic period, the island was divided in kingdoms, which the Ptolemies chose to abolish upon conquering Cyprus pursuant to establishing a unified administration system. Paphos was designated as the capital amongst the towns making up the kingdom. The Romans, who succeeded the Ptolemies, were unwilling to interfere with the established administration system and willfully continued the governance of the island by a General – Governor.

In light of the fact that the island's geographical location has always been considered as key for the rulers' empires, the various conquerors and colonialists that raided and ruled over the island throughout its history have heavily influenced its local administration system in order to adjust it to their needs in the wider region of the Mediterranean. During the Ottoman Period, i.e. 1571 A.D. – 1878 A.D., the island of Cyprus was considered as a province (*eyalet*) of the Ottoman Empire and it was annexed into the Empire in 1571. It was divided into the three *sanjaks*, i.e. administrative regions, of Famagusta, Kyrenia and Paphos, which were then sub-divided into several *kazas*. The *kazas* represented the areas which are today known as Larnaca (then Tuzia), Limassol, Episkopi, Kythrea, Paphos, Kouklia (then *Kukla*), Lefka, Morphou, Polis (*Hirsofu*), Famagusta, Kyrenia and Mesaoria (then *Mesariye*). Each *kaza* had its own *kadi/naib*, i.e. official.

The changes, trends and reforms in the Ottoman Empire affected the administration of Cyprus, which had to be adjusted accordingly. To this end, the island of Cyprus was downgraded to *sanjak*, i.e. considered of lesser importance as opposed to a key *eyalet*,

and then reverted to an *eyalet* again later on, with consequential changes in power over the island. Upon the placement of the island under the control of the head of the Ottoman Navy, the area was controlled by Ottoman officials called *mutesellim* and local *aghas* who acted as tax collectors. During that time, the Greek Cypriot community was administered by the Archbishop, as well as the Dragoman who was chosen by the Archbishop.

In 1878, the British took over the island and rendered it a British Colony. The island kept its colonial status until the country's independence in 1960. During their ruling, the British effected significant administrative changes in the local level through the enactment of primary and secondary legislation. Immediately upon assuming power over the island in 1878, the British passed the Administrative Divisions Law, Law IV/1879, through which the island was placed under the administration of the Governor, who assumed the power, authority and functions previously held and exercised by the officials of the Ottoman Empire (Criton Tornaritis, 1972). Provision was also made in the said law for the power of the British administration to define the geographical limits of *kazas* or districts through proclamations. The administration of districts was undertaken by Commissioners appointed by the Governor and the British chose to preserve the mukhtars in their administrative positions at that point in time.

The establishment of the first elected entities of local governance took place in 1882 through the enactment of the Municipal Councils Law, Law VI/1882, which made provisions for the establishment and function of elected councils. This piece of legislation was further supplemented in 1885 by the Law VIII/1885, which provided for the duties, rights and powers of the local authorities which were still under the control of the British (The Great Cypriot Encyclopedia, 1986).

In 1930, the British abolished the previous legislation regarding Municipal Councils and enacted the Municipal Corporations Law 26 of 1930, according to which the six towns of Cyprus were declared as urban municipalities and ten large villages were declared as rural municipalities. Each municipality constituted a legal entity and it was headed by a Mayor, a Deputy Mayor and the members of the Municipal Council. The right to vote and nominate themselves as candidates in Municipal elections was granted to all male citizens over the age of twenty-one years old who resided in the municipality for at least two years, whereas by virtue of the existence of two communities on the island, i.e. the Christian (Greek-Cypriot) and the Muslim (Turkish-Cypriot), separate electoral registers were formed for each Municipality. The number of members of Municipal Councils from each community was proportional to the analogy between the Christian and Muslim residents of each Municipality.

During the British Period, each village was administered by a *Mukhtar*, who was the chairman of the village authority, as well as by the *Azas*, who were the members of each village authority. Forty years after the abolition of the electoral system for the members of the village authorities through the Mukhtars Law XV/1981, the British passed the

Village Authorities Law of 1931, which provided for the appointment and duties of *Mukhtars* and *Azas* (Criton Tornaritis, 1972). It is noted that the institution of *Mukhtars* appears to have survived until today, but after the enactment of the current legislation regarding local self-governance, their roles, duties and powers are restricted to low level administrative tasks, whereas authority in villages (now Communities) has passed to Community Councils.

The 1930s also witnessed continuous changes, improvements and modernizations of the Municipal Corporations Law, as well as the enactment of the Public Health (Villages) Law, Cap.259, which established Village Health Commissions composed of the *Mukhtar* and the *Azas* of the village. These Commissions were dedicated to the preservation of good health and hygiene conditions in the villages where the Commissions were set up. In the 1950s, certain villages were declared “improvement areas” and Improvement Boards were assigned a series of duties aimed at the upkeep, cleaning and general preservation of public property and public space.

The year 1960 signified the end of the British Period and Cyprus became an independent Republic. In light of the presence of two communities on the island, i.e. the Greek-Cypriot community and the Turkish-Cypriot community, provisions were made in the Constitution of the Republic of Cyprus aimed at addressing the concerns of both communities, both at a national and a local administration level. Article 173 of the Constitution provided for the establishment of separate Municipal Councils in each of the five largest towns of the Republic, the members of which would be elected separately by the members of each of the two communities. Provision was made in the Constitution for the reconsideration of the continuation of such separation within four years from establishment. With regard to areas other than the municipalities of the five largest towns of the island, Article 175 of the Constitution provides that special arrangements may be made for the establishment of local authority organs. The number of members of such organs has to correspond to the proportion of each community’s members in the total population of the Republic.

Nevertheless, a series of events led to inter-communal conflicts in 1964 and subsequently the withdrawal of the members of the Turkish-Cypriot community from their participation in all local and central government bodies; such abstention continues to exist until today. In 1974, Turkey illegally invaded Cyprus and captured 37% of the Republic’s territory in blatant disrespect and violation of international law and human rights. Forty-six years later, occupation of nearly half the island continues and ongoing negotiations are held under the auspices of the United Nations pursuant to reaching an amicable resolution of the Cyprus problem, i.e. an international problem of illegal invasion and possession of a significant part of another member state of the United Nations. The consequences of the Turkish military invasion in Cyprus are evident until today, since a number of Municipalities and Communities are displaced, i.e. they maintain their legal status, but their mayors and councils have been displaced since 1974 and thereafter until

today, whereas other local authorities are not able to exercise their powers, functions and competencies over their entire geographical area of jurisdiction.

As a direct consequence of the withdrawal of the members of the Turkish-Cypriot community from the House of Representatives and the local administration, a series of constitutional, legal and operational challenges arose, which called for the application of effective redress in order to ensure the smooth operation of the Cyprus legal system. Consequently, the doctrine of necessity was invoked, legitimately giving the power to the Greek-Cypriot members of the House of Representatives to enact laws without the need for the participation of the Turkish-Cypriot members. The legality of the application of the said doctrine was challenged in the historic case of *The Attorney General of the Republic of Cyprus v. Mustafa Ibrahim* (1964) CLR 195, where the Supreme Court of Cyprus justified and upheld the necessity of the application and operation of the doctrine as a means of enabling the continuation of the operation of the Republic and the governance of the country despite the deadlock. By application of the doctrine of necessity at the local administration level, the Municipal Corporations Law, Cap.240 which made provisions for the operation, administration and competencies of the Municipalities, was re-enacted, whereas the Villages (Administration Improvement) Law, Cap.243 and the Village Authorities Law of 1931, Cap.244 continued to be in force. The Municipalities and Communities Laws, which are the main pieces of legislation regarding local self-government in Cyprus, were enacted in 1985 and 1999 respectively.

The Municipalities Law 111/1985 and the Communities Law 86(I)/1999 regulate the establishment, operation and functions of municipalities and communities, respectively. Municipalities and Communities are the two types of local authorities in the Republic of Cyprus. The Municipalities are larger in population than Communities, but the number of the former is significantly less than the latter. There are 39 (thirty-nine) Municipalities, of which the 9 (nine) are displaced since the Turkish invasion, and 492 (four hundred and ninety-two) Communities, of which the 142 (one hundred and forty-two) are displaced.

In 1988, the Republic of Cyprus ratified the European Charter of Local Self-Government by enacting the European Charter of Local Self-Government (Ratifying) Law of 1988, L.27/1988. The said law provided for the exception of Article 5 and Article 7 paragraph 2 from the ratification of the Charter. Nevertheless, the exception of Article 5 was later abolished in 1998 through the enactment of the European Charter of Local Self-Government (Abolishment of Exceptions) Law of 1988, having as a result for the Republic of Cyprus not consider itself bound by Article 7 paragraph 2 of the Charter today.

Undoubtedly, the institution of local self-government in Cyprus and its operation is not without its weaknesses and there is considerable room for improvement, as observed by the Group of Independent Experts on the European Charter of Local Self-Government in their monitoring reports and recommendations in 2005 and 2016. The need for reform

and modernization of local self-government in Cyprus is widely acknowledged by both, the local community in Cyprus and the Council of Europe.

To this end, discussion has been in progress for years for the modernization of local self-government in Cyprus. Successive Governments of the Republic of Cyprus invited experts to advise on the extent and ambit of the necessary amendments to the existing legislation, always taking into consideration the guidance and observations included in the monitoring reports prepared and approved by the Group of Independent Experts on the European Charter of Local Self-Government (hereinafter referred to as the “Group of Independent Experts”). The main theme of the proposed amendments has been the creation of Complexes of Municipalities and/or Communities for the execution of services, as well as the institutionalization of currently informally composed and operated complexes of Communities, pursuant to exploiting economies of scale, reducing the cost of providing such services especially by smaller Communities with less resources and enhance the co-operation between Communities and Municipalities for the better service of their residents. The outcome of these efforts for the reform of local self-government in Cyprus led the Council of Ministers on 14.7.2015 to approve the following bills: (a) “The District Complexes Law of 2015”, (b) “The Communities (Amending) Law of 2015 and (c) “The Municipalities (Amending) Law of 2015”. These bills, despite having been submitted to the House of Representatives, were not passed into laws.

This reform consultation process and discussions have been ongoing for years amongst all the local self-government key actors, including the Government, the Union of Municipalities, the Union of Communities and the political parties. The Group of Independent Experts is also informed of the ongoing process and it has been the subject matter of examination during the Group of Independent Experts’ delegation visit in Cyprus in April 2016, for the purposes of preparing the Congress’s last monitoring report on the compliance of Cyprus with the articles of the Charter. At the time of preparation of this report, the discussions for the reform and modernization of local self-government in Cyprus have progressed resulting to the submission of the bill named “The District Complexes Law of 2015” to the House of Representatives, which was thoroughly discussed and finally completed in 2019. The aforesaid bill, during the discussions in the Parliament, was renamed “The District Self-Government Organizations Law of 2019” and provides for the establishment and operation of one District Organization in each district, which will undertake the competences of the waterboards, the sewerage and drainage boards and the management of solid waste, at district level. Moreover, progress has been made due to the consultations made between all relevant actors, the Central Government, the Unions of Municipalities and Communities and the political Parties, leading to the formation of the new two bills for the reform of local self-government, namely “The Municipalities Law of 2020” and “The Communities (Amending) Law of 2020”. It is worth noting that the municipalities will be reduced from 30 to 17 or 19 in order to satisfy local needs. Regarding communities, 32 Local Service Complexes will be established and each community will become a member of a Local Service Complex.

The aim of the bill for the amendment of the Municipalities Law is to adopt a new model of operation and government of the municipalities, introducing the concept of administrative and financial autonomy and additional competences are transferred from the Central Government to the municipalities. The Central Government is excluded from intervening in the process of approving the structure of positions in the municipalities, the state grant is abolished and the municipalities are granted the revenues from the registration fees of the vehicles of private and public use. In addition, the Government intervention in the process of approving municipal budgets is minimized, transparency is enhanced by institutionalising control and accountability mechanisms and greater citizen participation in the decision-making process is encouraged. Municipalities will gradually become town planning authorities and the beach management is transferred to them; at a later stage, the responsibilities of the School Boards will be transferred to them, too.

As regards the bill for amending the basic Communities Law, it aims to the establishment and operation of Local Service Complexes for the provision of common services to the Communities participating in each Complex, which will be administered by Councils in their capacity as Legal Persons of Public Law, having the necessary competences and powers for the execution of these services to the benefit of the communities and their citizens. Moreover, there are provisions improving the right of information and participation of the citizens in the local affairs.

2 Constitution and legal foundation for local self-government

The European Charter of Local Self-Government (hereinafter referred to as the “Charter”) imposes the obligation on ratifying States to acknowledge the self-governance of local authorities by legislative act, and where possible, in the country’s constitution, pursuant to establishing a binding mechanism for the protection and maintenance of the autonomy of local authorities. More specifically, Article 2 of the Charter provides that the principle of local self-government shall be recognized in domestic legislation, and where practicable in the constitution. The Constitution of the Republic of Cyprus makes no explicit recognition of the principle of local self-government, but rather, general provisions are made mainly about the co-existence of the Greek and Turkish community at a local authority level. Elaborate provisions in respect of the operation and competences of Municipalities and Communities are made in the Municipalities and Communities Laws which regulate the existence, operation and functions of Municipalities and Communities in Cyprus. Nevertheless, neither the Constitution nor the said laws provide any constitutional or legislative safeguards for the principle of local self-government in Cyprus.

From the establishment of the Republic of Cyprus in 1960 and thereafter until today, the Constitution of the Republic of Cyprus has not made any reference to the term or principle of local self-government. Despite the theoretical appeal of the ability to amend Part XII of the Constitution to achieve the explicit adoption and acknowledgment of the principle of local self-government pursuant to complying fully with Article 2 of the Charter, no

such step has been taken by the House of Representatives to date. Constitutional amendments are rare and considering the consequences that such changes may have on the ongoing Cyprus problem, successive Governments have not shown willingness to bring forward any suggestions for such additions. The provisions of the Constitution related to the Turkish-Cypriot community have not been applied since the decision of the Turkish-Cypriot community to withdraw from all levels of administration and powers in the Republic of Cyprus, as well as in light of the subsequent Turkish military invasion.

Currently, Part XII of the Constitution makes reference to the institution of local authorities, the co-existence of the two communities at a local authority level, the collection of taxes, the provision of permits and the framework for the exercise of the local authorities' functions. More specifically, Article 173 of the Constitution was dedicated to the co-ordination of the two communities at a local authority level. It provides for the creation of separate municipalities by Turkish residents in the 5 (five) largest towns of the country, i.e. Nicosia, Limassol, Famagusta, Larnaca and Paphos, under the condition that the President and the Vice-President of the Republic may re-examine the continuation of existence of the separation of Municipalities within 4 (four) years from the commencement of validity of the Constitution. The aforesaid article provides that the local council of the Greek Municipality in each of the aforesaid towns is elected by the Greek residents of the town having the right to vote, and the council of the Turkish Municipality is elected by the Turkish residents of the said town. For co-operation purposes, Article 172 provides for the establishment of a co-ordination committee in each town, composed of two members from each separate Municipality, with the mandate of undertaking all activities which are required to be executed jointly by the two Municipalities, as well assuming responsibility for all matters for which co-operation is necessary.

Turning to the tax collection powers of local authorities, Article 174 of the Constitution provides for the power of local authorities to impose and collect a series of taxes, dues and charges. Under the said Article, Municipalities have the power to impose and collect charges and taxes for the use of municipal markets, slaughter houses and other municipal places, as well as entertainment charges and the dues for the provision of services jointly by both communities to non-residents. Furthermore, pursuant to Article 175 of the Constitution local authorities have the power to grant permits regarding immovable property and construction works within the geographical area of competence of the local authority upon the imposition and collection of the relevant charges. The Constitution further provides (Article 176) that each Municipality in the 5 (five) largest towns has town planning competence over its whole geographical area covered. Special bylaws may be enacted for the establishment of a town planning authority within the competence of each local authority, composed of 6 (six) Greek and 3 (three) Turkish Cypriots deciding on any issue by absolute majority.

In general, the municipalities in each of the aforesaid 5 (five) largest towns exercise their competences and performs all its functions within the geographical area determined by

agreement of the President and Vice-President of the Republic of Cyprus pursuant to Article 178 of the Constitution, whereas special provisions could be made under Article 179 of the Constitution for the establishment of local authority organs within the remaining areas of the Republic.

Drawing from the aforesaid provisions of the Constitution, the Municipalities Law and the Communities Law were enacted to enumerate in detail the functions and competences of the two types of local authorities in the Republic of Cyprus, i.e. Municipalities and Communities. Both laws are lengthy and detailed, since they constitute the main pieces of legislation regulating the local authorities' operations, being in this way essentially the main documents to study in respect of any matter related to local authorities in Cyprus. Without intending to embark in great detail as to the contents of the Municipalities and Communities Laws, since this is the subject matter of subsequent sections of this national report, it is noted in outline that the two pieces of legislation provide in general for the establishment of municipalities and communities, the organization of elections, the administration of the local authorities, the employment of local authority personnel, the ownership of movable and immovable property, the compilation and approval of annual budgets, the imposition and collection of taxes, charges and dues, as well as the list of functions and competences of the municipalities and communities.

Despite the length of the Municipalities and Communities Laws, they make no explicit reference or recognition of the term and principle of local self-government. To the contrary, the two pieces of legislation contain provisions which substantially compromise the aim of Article 2 of the Charter to establish legally binding safeguards of the autonomy of local authorities in Cyprus and afford the Government with extensive powers to regulate, intervene and supervise the administration of local affairs in Cyprus.

Considering the above, it is evident that compliance of the Republic of Cyprus with Article 2 of the European Charter of Local Self-Government is limited due to the absence of express recognition, acknowledgment and adherence to the principle of local self-government, as well as the legislative provisions endowing the Government with substantial powers of intervention in the administration of local affairs.

Furthermore, the ratification of the Charter in Cyprus law cannot be deemed as adequate recognition of the principle of local self-government for the purposes of Article 2 of the Charter, both because of its inferior force compared to the Constitution and the interpretation of its provisions given by the Supreme Court of Cyprus in key case law. The Constitution of Cyprus adopts the monistic theory of incorporation of international treaties, agreements and covenants into domestic law. According to Article 169 of the Constitution, any international treaty entered into with other States or Organizations regarding commercial issues, financial co-operation for issues including payments and credits, and *modus vivendi*, are entered into upon a decision of the Council of Ministers. The negotiation and signing of Conventions, covenants or international treaties is effected upon a decision of the Council of Ministers for this purpose, but such Conventions do not

come in force and consequently do not bind the Republic of Cyprus unless and until a ratifying law is enacted by the House of Representatives. From the date of their publication in the Official Gazette of the Republic, treaties, conventions and agreements have superior force over any domestic law, on the condition that these treaties, conventions and agreements are correspondingly applied by the other party too.

In Cyprus, a Convention has superior force over any prior or subsequent domestic law, except the Constitution, on the principle of *lex superior derogate inferiori*. Constitutional supremacy is respected and hence Conventions are of inferior force than the Constitution of Cyprus and they are subject to judicial review. In case of inconsistency between the provisions of the Constitution and a Convention, constitutional provisions prevail over the provisions of the Convention. In terms of application, Conventions have superiority and precedence in application over domestic legislation (except the Constitution) and retains its nature as part of international law without repealing any inconsistent domestic law.

There is only one Supreme Court judgment addressing the reception, applicability and application of the European Charter of Local Self-Government in Cyprus, namely the judgment of the Supreme Court in the case of *In re Antis Pantelides, personally and/or as a member of the Municipal Committee of Morphou and/or resident and electorate of Morphou and others v. Andrea Leantzi, Municipal Secretary of Morphou, and others* (1991) 3 JSC 273. The Applicants in the said case filed an administrative recourse against the decision of the Municipal Council of Morphou for the election of the President and Vice-President of the Municipality by the political parties participating in the Council for a transitional period until the election of the new members of the Municipal Council through elections. The elections for the members of the Municipal Council of Morphou were adjourned, along with the elections for all the Municipalities occupied by the Turkish military forces as per the relevant decision of the Council of Ministers. The relevant article of the Municipalities Law provided that in the event of adjournment, the President and the Vice-President of the Council would be designated by the political parties through their appointed representatives in the Council and both, the President and the Vice-President would exercise their competences on rotation.

After an unsuccessful attempt to form the Municipal Council as a body, the Municipal Secretary Mr Andreas Leantzis called a meeting of all the appointed representatives of the political parties participating in the Municipal Council, in which the participants elected the members who would act as President and Vice-President. The first Applicant participated in the meeting but abstained from voting, raising an objection as to the legitimacy of calling the meeting and reserving his rights. The Applicants challenged the aforesaid decision *inter alia* on the basis that the said decision contravened Article 3 of the Charter which provides *inter alia* for the election of the members of the Council by electorates through secret ballot.

The Supreme Court, acting as Administrative Court, dismissed the administrative recourse, stating that the challenged act did not constitute an enforceable administrative act that would otherwise be challengeable before the Supreme Court through a recourse. The action of the Municipal Secretary to call a meeting of the members of the Municipal Council was just a preparatory act, even though it was aimed at the issuance of an administrative act, namely the election of the President and Vice-President. The Supreme Court held that the Charter was not self-executing and hence, it does not have superior force over the domestic law. The fact that the Charter was ratified by domestic law does not by itself render it a self-executing Convention. From the wording and the content of the Charter, it is evident that it is not a self-executing Convention, since it does not have as its direct subject matter the acknowledgment and safeguarding of personal rights and freedoms. According to the case of *Malachtou v. Armefti et al* (1987) 1 CLR 207 (FB), for a treaty to be applicable, it must be self-executing. Self-executing provisions of treaties, conventions and duly ratified international agreements confer rights and impose liabilities without the need to include their provisions into a separate enactment. A provision of a treaty is self-executing if the rights vested or the obligations imposed thereby are comprehensively defined to the extent of rendering them enforceable before a Court of law without further addition or modification, always taking into consideration the wording of the Convention. The Supreme Court held that this was not the case as regards the provisions of the Charter and its contents.

The aforesaid interpretation and the placement of the Charter at the bottom of the hierarchy of the Cyprus legal order does not allow its invocation for the establishment of effective safeguards of the principle of local self-government. Furthermore, the lack of express recognition of the principle in the Constitution, the absence of any such reference in the Municipalities and Communities Laws and the extensive involvement of the State in the administration of local affairs indicates non-compliance with the Charter. For this purpose, the Congress of Local and Regional Authorities of the Council of Europe (hereinafter referred to as the “Congress”) has expressed concern in its Recommendation 389 (2016) for the Local Democracy in Cyprus “*at the weakness and imprecision of the legislative basis for the powers and responsibilities of local authorities and for the conditions under which they are exercised, as well as the absence of constitutional safeguards for the principle of local self-government and the status of local authorities*”. Additionally, in the same Recommendation, the Congress invited the Cypriot authorities to “*ensure the direct applicability of the European Charter of Local Self-Government within the domestic legal system and, in particular, that the Charter be given due consideration in Court proceedings*”.

The said concerns can be entertained effectively by amending the text of the Constitution of the Republic of Cyprus, as well as the Municipalities and Communities Laws, in order to expressly recognize and acknowledge the principle of local self-government and limit the involvement of the Government in the affairs of local authorities. Such changes and amendments will provide additional safeguards for the operation and existence of the principle of local self-government. For this purpose, the Congress invited the Cypriot

authorities through its latest Recommendation 389 (2016) to “*provide clear recognition of the legislative and, if practicable, the constitutional status of local governments as well as the principle of self-government for all local authorities in order to strengthen their substantial role in regulating and administering local public affairs, and to regulate the legal standing of local councilors to allow them the free exercise of their functions*”.

3 Scope of local self-government

The extent of the competences of local authorities and the degree of autonomy which is necessary under the European Charter of Local Self-Government in order for the local authorities to perform their functions and execute their duties is prescribed in Article 4. In essence, Article 4 of the Charter seeks to endow local authorities with autonomy to exercise their powers and perform their duties without any limitation or undermining by the central Government, whereas they should be consulted timely and appropriately for any matter concerning them directly. Whilst Cyprus complies with most aspects of Article 4 of the Charter, concerns have been expressed as to the intervention of the central Government in the local affairs and the limited extent of functions that can be exercised fully and exclusively by Municipalities and Communities.

Before embarking into an assessment of the degree of compliance of the Republic of Cyprus with Article 4 of the European Charter of Local Self-Government, it is useful to outline the extent of the functions of the Municipalities and Communities in Cyprus. According to Articles 83 and 81 of the Municipalities and Communities Law respectively, the Municipalities and Communities enjoy the right and power to administer all the local affairs of the local authority within their geographical area of jurisdiction. This is also reflected in Articles 177 and 178 of the Constitution which state that each local authority exercises its competences and all its functions within its geographical area. All the powers given by law to the Municipalities and Communities are exercised by the Mayor and the councilors of the Municipal Council or the Chairman of the Community Council and its members, as applicable.

The functions and duties of Municipalities are outlined in Article 84 of the Municipalities Law and they include: the arrangement for the implementation of the provisions of the Town Planning and Housing Law and act as a Town Planning Authority, the provision for the construction, maintenance and operation of a municipal water supply, sewerage and drainage systems, the construction, maintenance, cleaning and lighting of roads, streets and bridges, the naming of streets, the provision for the hygiene and cleanliness of municipal streets and any other establishments where food and drink is sold within the area of the Municipality, the collection and processing of garbage and waste, the protection of the environment in the municipal area, the upkeep of municipal areas, their decoration and maintenance in good state, the establishment of cemeteries, the control and regulation of the practice of any profession in the municipality, the construction and operation of public restrooms and baths, the regulation of the maintenance, feeding and possession of animals and birds within the Municipality, the establishment, maintenance

and operation of rest homes, charitable institutions, slaughterhouses, theaters and the issuance of permits in accordance with the law. Furthermore, according to article 85 of the Municipalities Law, the Municipalities have the power to obtain loans upon obtaining the prior approval of the Council of Ministers, mortgage municipal property in exchange for the receipt of loans provided they obtain the approval of the Minister of Interior, acquire immovable property, establish municipal markets and a municipal radio station, create artisanship areas, establish and operate parks, gardens, courses, swimming pools, entertainment establishments and youth centers, plant trees across streets, regulate swimming in the sea, impose entertainment charges and hotel fees, promote intellectual activity and enter into contracts for the creation of public utility projects.

Similar powers and duties are enjoyed by Communities, since the structure and spirit of the Communities Law is based on the Municipalities Law. Additionally, according to the Communities Law, the Communities have the power to enter into contracts with other Communities for the joint execution of public utility projects and the joint provision of services that were previously provided by each local authority separately.

The involvement of the Government in the administration of the local affairs and the need for their approval prior to the execution of key operational tasks is apparent in the wording of the Municipalities and Communities Laws. First and foremost, the annual budget of the Municipalities and Communities, as well as the annual development budget, are both subject to the approval of the Council of Ministers. This requirement is included in both pieces of legislation regulating the operation of Municipalities and Communities. These budgets are also submitted to the District Officer and the Minister of Interior. According to the Municipalities and Communities Laws, in the event that the submitted budgets are not approved by the Council of Ministers but local authorities required liquidity for the continuation of the provision of their services to their residents, the Council of Ministers may authorize the payment of all such necessary expenses for a period of up to one month if they deem this fit upon an application by the Municipalities or Communities in need of such liquidity. If any Municipality or Community wishes to embark into any expenditure which is not included in the approved budget, this can only be done upon the approval of the Council of Ministers. The Municipalities and the Communities are annually subsidized through the provision of grants, which are suggested by the Council of Ministers and approved by the House of Representatives. The obligation of the State to provide such subsidies is included in the Municipalities and Communities Laws and the receipt of such grants constitutes a key income stream for the local authorities.

Apart from the aforesaid involvement of the Council of Ministers in the financial affairs of the local authorities, the State has a decisive role in the disposal of immovable property owned by local authorities. More specifically, the approval of the Council of Ministers is necessary for the sale or exchange of any immovable property belonging to the Municipalities or the Communities, the imposition of any encumbrances on the local authorities' immovable property, the leasing of the immovable property for a period exceeding ten years, the establishment or participation in companies for the development

or utilization of municipal immovable property and the entering into contracts with a duration of more than five years.

The control of the Council of Ministers also extends to the securing of funds by way of loans. According to the Municipalities and Communities Laws, the approval of the Council of Ministers is necessary for the receipt of any loans required for the engagement into any public utility project or the purchase of mechanical equipment and vehicles for public utility purposes. The Council of Ministers has the power to impose conditions on the provision of such loans, whereas the mortgage of any immovable property or the issuance of any bonds in exchange for the provision of any loan necessitates the prior approval of the Council of Ministers.

Furthermore, the Municipalities and Communities Laws provide for additional audit, oversight and intervention powers by the State: the financial affairs of the local authorities are under the Auditor General's scrutiny. The Auditor General of the Republic of Cyprus has the power to call any councilor or employee of the local authorities to provide him/her with any information, explanation, minutes, book, contract, bill, invoice or any other document that the Auditor General deems necessary for audit purposes.

It is evident from the above that the basic powers and responsibilities of local authorities in Cyprus, i.e. Municipalities and Communities, are prescribed statutorily in the Municipalities and Communities Laws. Simultaneously, the law provides for the existence or enactment of other laws related to the issue of the exercise of local authorities' competences, hence not preventing the attribution to local authorities of additional powers and responsibilities for specific purposes through the enactment of other laws. The above suggest that there is full compliance of the Republic of Cyprus with Article 4 paragraph 1 of the Charter, which states that the basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute and that the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law should not be prevented.

Article 4 paragraph 2 of the Charter provides that 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. The provisions of the Municipalities and Communities Laws enumerate the functions that local authorities have the power to execute and for important issues, the prior approval of the Council of Ministers is required prior to the performance of such tasks, as mentioned herein above. Despite the matters for which approvals are required by the central Government, the Municipalities and Communities Laws allow local authorities to exercise full discretion in the execution of all the duties and powers which are in their sphere of jurisdiction, having as a result for the provisions of the Municipalities and Communities Laws to comply with Article 4 paragraph 2 of the Charter. Nevertheless, the letter of the law does not reflect the actual state of affairs; despite the aforesaid legislative provisions, the financial dependence of local authorities on the Government and the extensive involvement of the Government or Independent Bodies of the State in

the administration of the local affairs renders compliance with Article 4 paragraph 2 debatable in practice. This view seems to be shared by the Congress too, which refers to the existence of non-compliance problems in respect of the implementation of paragraph 2 of Article 4 of the Charter.

Article 4 paragraph 3 of the Charter enshrines the principle of subsidiarity, according to which public responsibilities have to be exercised, in preference, by those authorities which are the closest to the citizen and allocation of responsibilities by another authority should weight up the extent and nature of the task and the requirements of efficiency and autonomy. Compared to the local self-government systems of other Members States, the local authorities in the Republic of Cyprus are entrusted with a wide array of functions and responsibilities, ranging from standard functions such as providing for the hygiene and safety of its residents, to more important and substantive responsibilities, such as the provision for the construction of roads, sewerage and drainage systems, the issuance of permits and the collection of charges and local authority taxes. Hence, it is submitted that there is no violation of Article 4 paragraph 3 of the Republic of Cyprus and despite statutory and practical restrictions in the exercise of key functions, especially due to the financial dependence of the local authorities on Government grants, Cyprus complies with the principle of subsidiarity. Despite the above, it is noted that the Congress of Local and Regional Authorities of the Council of Europe has expressed concern in its Recommendation 389 (2016) at the *“fact that only minimal responsibilities are conferred by law on local authorities, and particularly the lack of genuine local government functions that can be exercised fully and extensively”*, simultaneously inviting the Cypriot authorities *inter alia* to *“assign substantial powers and responsibilities to local authorities so that they can exercise them fully and exclusively in practice and, in accordance with the principle of subsidiarity, and define the relevant tasks as genuine local government functions”*.

The aforesaid observation also relates to Article 4 paragraphs 4 & 5 of the Charter. Paragraph 4 of Article 4 provides that 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. Furthermore, Article 4 paragraph 5 provides that 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. There is no provision in the Municipalities and Communities Laws preventing the fulfilment of the requirement of allowing local authorities discretion in adapting the exercise of their powers to local conditions as stated in Article 4 paragraph 5 of the Charter. To the contrary, Articles 83 and 81 of the Municipalities and Communities Law respectively explicitly enable the Municipalities and Communities to administer all local affairs at their own discretion within the letter of the law.

Nevertheless, as it is evident from the above, not all the powers provided to the local authorities are full and exclusive despite the ability of the local authorities to adapt the exercise of their powers to local conditions, since the approval and prior consent of the

Council of Ministers or the Government is necessary in order to receive loans, sell, rent, mortgage or dispose of immovable property, enter into contracts with duration of more than five years and compile annual budgets. Furthermore, some of the powers of local authorities, like the issuance of building permits, are delegated or strictly controlled by the Government and the Congress believes that most powers of local authorities in Cyprus are not exclusive and full. For this reason, in its last Monitoring Report, the Congress has invited the Cypriot authorities to relinquish the power of the Government to approve the budgets of all local authorities prior to their implementation and limit every kind of government supervision over local authorities to an *ex post* control of the legality of the administration and regulation of the Municipalities and Communities, simultaneously determining precisely which administrative authorities are empowered to exercise legal supervision over Municipalities.

Lastly, paragraph 6 of Article 4 of the Charter states that local authorities have to 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. Cyprus is indeed in compliance of this paragraph of the Charter. According to article 7B of the Municipalities Law, Municipalities have the right to be registered as regular members of the Union of Municipalities. The Union of Municipalities currently represents 39 (thirty-nine) members - Municipalities, including 9 (nine) displaced Municipalities. Likewise, Communities have the right to be registered as members of the Union of Communities pursuant to article 9A of the Communities Law and the said Union represents a total number of 492 (four hundred and ninety-two) Communities. Apart from enjoying statutory recognition, the two Unions are in practice consulted by the Government for matters which concern them, albeit the absence of an institutionalized and regular consultation system in place between the Unions and the Government. The practice of consulting the Unions of Municipalities and Communities for matters which concern them has been evident during the recent talks for the reform of local government in Cyprus, where both Unions have been invited on numerous occasions to express their views at the proposed bills. Furthermore, successive Governments have always endeavored to consult with individual Municipalities and Communities prior to taking any action that affects them and despite infrequent voices to the contrary, the views of the local authorities have almost always been taken into consideration during the decision-making process for any matter that concerns them. This has been indeed evident during the recent talks for the reform and modernization of local self-government in Cyprus. The statutory recognition of the Unions through a legislative amendment of the Municipalities and Communities Laws in 2009 and the engagement of these actors in practice, insofar as possible, in discussions for matters concerning local authorities renders the Republic of Cyprus compliant with Article 4 paragraph 6 of the European Charter of Local Self-Government.

4 Protection of local authority boundaries

The European Charter of Local Self-Government seeks to ensure that no change is effected in the boundaries of local authorities without prior consultation with their elected organs or a referendum amongst its residents. More specifically, Article 5 of the Charter provides that changes in local authority boundaries shall not be made without prior consultation with the local communities concerned, possibly by means of a referendum where this is permitted by statute. Albeit not requiring the organization of referendums, the Municipalities and Communities Laws do not allow changes to the boundaries of local authorities without prior consultation with the local authorities affected.

As regards municipalities, article 8 of the Municipalities Law provides that the Council of Ministers may redefine, amend, extend or limit the boundaries of a Municipality upon an application by the interested local authorities and after taking into consideration their views. The aforesaid article suggests that any change to the boundaries of a Municipality may only be effected upon an application of a Municipality and no such change may be made without prior consultation with its representative organs, i.e. the Mayor and the Municipal Councilors. Despite not requiring a referendum amongst the residents of a Municipality for this purpose, the aforesaid article of the Municipalities law ensures compliance with Article 5 of the Charter and provides adequate safeguards for the Municipalities' autonomy to be involved in any decision affecting its boundaries. To date, the Council of Ministers has reportedly issued 24 (twenty-four) orders for the amendment of municipal boundaries, 18 (eighteen) orders for the extension of municipal boundaries and 17 (seventeen) orders for the definition of municipal boundaries.

Similar provisions apply to Communities. Article 114(c) of the Communities Law provides that the Council of Ministers has the power to define or amend the boundaries of any town or community, to abolish any community and to provide for the establishment of any new community by issuing a relevant order upon taking into consideration both, the opinion of the interested local authorities and a report of the Minister of Interior prepared for this purpose. A copy of this report is also filed at the House of Representatives. No provision is made in the law for the organization of a referendum amongst the residents prior to the issuance of any of the aforesaid orders of the Council of Ministers; nevertheless, the aforesaid provision copes well and complies with the provisions of Article 5 of the European Charter of Local Self-Government. To date, the Council of Ministers has reportedly issued 18 (eighteen) orders for the redefinition or change of community boundaries.

Additionally, the merger of two Municipalities may only be effected upon a successful referendum undertaken amongst the residents of the Municipalities wishing to merge. Article 5 of the Municipalities Law provides that the Minister of Interior may call a referendum amongst the electorate of two Municipalities pursuant to examining the intention of the residents of two Municipalities to merge, provided that the Municipal Councils of the two Municipalities involved agree to the merger and an application is

filed for this purpose by a Municipal Council or the merger of two Municipalities is deemed appropriate by the Minister of Interior. A positive result in the referendum is a necessary pre-condition to the merger and this provides a safeguard to the autonomy of the local authorities involved.

Considering the above, it is evident that Article 5 is fully implemented by the Republic of Cyprus and sufficient safeguards are provided in the respective laws against interference of the Government with the boundaries of the local authorities without the residents' consent.

5 Administrative structures and resources for the tasks of local authorities

An essential element of the principle of local self-government is the liberty of the local authorities to determine their own administrative structures in order to adjust them to local needs and ensure effective management. An indisposable part of this element is the ability and power of the local authorities to decide on their own conditions of service pursuant to ensuring that high-quality staff is recruited and adequate training opportunities, remuneration and career prospects are provided to them. This goal is sought by Article 6 of the Charter. Under the Municipalities and Communities Laws, local authorities are at liberty to determine their administrative structures, but in practice the aims that such provisions pursue are compromised by the financial dependence of local authorities on Government grants due to the lack of own capacity to raise funds to execute their functions. The recent economic crisis led to the imposition of a moratorium in the employment of civil servants. These restrictions applied to local authority personnel too, having as a result for shortages of personnel to be caused in the sphere of local authority administration. This moratorium has been abolished.

Both, the Municipalities and Communities Laws provide that the supreme authority of Municipalities and Communities is the elected Municipal Council headed by the Mayor and the Community Council, respectively. The members of the Municipal and Community Councils cannot be part of the local authority's personnel and hence, they cannot perform administrative functions. Such functions are executed by the employees of the local authorities and workers, who are employed pursuant to and in accordance with the Municipalities and Communities Laws.

Commencing from Municipalities, the employment of personnel by the Municipalities is regulated by Municipalities Regulations which are issued pursuant to article 53 and 57 of the Municipalities Law. Under article 53 of the Municipalities Law, each Municipality has the power to compile, apply and publish in the Official Gazette of the Republic schemes of service for all the positions of the municipal service, whose number and salary scale for each position will be included in the annual budget of the Municipality. The procedure for the recruitment and selection of municipal employees, including their earnings, subsidies, adjustment of salaries, other benefits, the terms of exercising

disciplinary powers and any other relevant issue is regulated by the regulations which are issued upon securing the approval of the Council of Ministers

The Municipalities Law does not oblige the Councils to employ staff at specific positions but rather designates positions in the service of Municipalities that may be filled in their administrative hierarchy, given the liberty of the Municipal Councils to employ personnel at lower positions if necessary, provided that there is compliance with the provisions of the law. Regulations issued by the Municipalities upon securing the approval of the Council of Ministers may provide for the creation *inter alia* of the positions included in article 54(1)(a) of the Municipalities Law, i.e. the Municipal Secretary, the Municipal Engineer, the Municipal Treasurer, the Municipal Doctor, the Municipal Hygiene Inspector and the head of any other department of the Municipality. The Council has the statutory power to appoint personnel at the aforesaid positions, but also to appoint employees at lower positions pursuant to article 55(1) of the Municipalities Law and workers pursuant to article 5 of the said laws.

The particulars of employment of all Municipal employees are provided and regulated in the Municipal Regulations which are issued as above. For the sake of convenience and uniformity, most Municipalities choose to adopt the Regulations of the Municipality of Nicosia, i.e. the capital of Cyprus. Such Regulations make detailed provisions as to all aspects of employment, from recruitment to retirement and the imposition of disciplinary punishments. Service at the Municipalities may be permanent or temporary and all such positions are included in the Municipalities' annual budget. For each position of service, a scheme of service outlines the rights, obligations, responsibilities and duties of the person serving the Municipality from such position. Vacancies may be filled through the appointment of new employees, in which case the position is called a position of first appointment, or through the promotion of current employees in higher positions, in which case the position is called a position of promotion. The Regulations include provisions as to the qualifications required for the appointment or promotion to any position in the municipal service, as well as the procedure for selection to such positions and provisions regarding their benefits, retirement, training, leave, fundamental duties, right to be a member of trade unions, freedom of speech, conflicts of interest, political rights, civil liability for damages or losses and working hours. The Regulations also include a disciplinary code, the possible disciplinary punishments and how the disciplinary proceedings in the municipality shall be conducted when necessary. It is evident from the above that employment at the Municipalities is well regulated and employees enjoy adequate protections as employees of the Municipalities.

Provisions similar to the Municipalities Law in respect of the employment of employees are included in the Communities Laws, with essentially the only difference being that article 50(1) of the Communities Law makes reference to the position of the Community Secretary, rather than the aforesaid list of municipal employees provided in Article 54(1)(a) of the Municipalities Law. Article 49(2) enables the Communities to issue Regulations upon securing the prior approval of the Council of Ministers and to this end,

Community Regulations have been issued for individual Community Councils, which regulate the service of employees thereto.

Having said the above, it may be argued that both, Municipalities and Communities have the freedom and ability to determine their own internal administrative structures to a large extent, in compliance with Article 6 paragraph 1 of the European Charter of Local Self-Government. The Municipalities and Communities Laws do not limit the Municipalities and Communities respectively as to their administration structure and they don't impose any restrictions as to the employment of personnel. To the contrary, the local authorities have the ability to compile the schemes of service for their employees and in this way determine the rights, obligations, duties and responsibilities of their employees. Moreover, the aforesaid laws allow them to establish new departments and appoint personnel to head such new departments, which indicates that the current legislative provisions are not restrictive but rather allow flexibility to the local authorities. Apart from the above, the local authorities have the right to employ workers and personnel at their full discretion to fill in lower positions in accordance with the relevant articles of the law, the regulations issued pursuant to the law and of course their financial capacity. Through the aforesaid legislative and regulatory mechanisms, the local authorities in Cyprus are granted with the required legislative tools to manage and administer their local affairs effectively.

Nevertheless, it is noted that in practice local authorities, especially small communities, are unable to finance all their operations with their own means, making the provision of the annual State grant absolutely necessary for the performance of their functions. A number of small communities do not have the financial resources to employ personnel in order to undertake their functions, having as a result to rely entirely on the Government and the annual State grant in order to discharge their obligations. Furthermore, there are great differences amongst local authorities in respect of the number of employees working at their service, with some Communities not having any employees at all, whereas other Communities employing dozens of employees.

The insufficiency of financial resources has led the Congress to express concern at *“the inadequacy of resources available to local authorities for the exercise of their powers, which leads to a dependency on the State, in particular in the case of small communities [...] as well as the differences between the municipalities and communities with regard to their personnel and other technical resources”* (see Recommendation 389 (2016)). For this purpose, the Congress has invited the Cypriot authorities to *“provide adequate financial resources for local authorities which should be commensurate with their responsibilities and which they may dispose of freely within the framework of their powers”*.

Turning to Article 6 paragraph 2 of the Charter, which requires *inter alia* such conditions of service in local authorities to permit high-quality staff on the basis of merit and competence, adequate training opportunities, remuneration and career prospects, it may

be argued that the Republic of Cyprus seems to provide all the required legislative and regulatory means to comply with its provisions. Still, the effects of financial dependence of local authorities on State grants deprives the Republic from full implementation of Article 6 paragraph 2.

As regards the legislative and regulatory means of dealing with the provisions of Article 6 paragraph 2, it should be noted that the Municipalities and Communities are entities of public law, not private organizations. As such, they are obliged to follow transparent recruitment procedures and act in accordance with the principles of administrative law which are deeply embedded in the Cypriot legal system. These procedures are adequately described in the regulations which are issued under the relevant articles of the Municipalities and Communities Laws and they provide for the qualifications required of candidates for different positions in the administrative hierarchy of local authorities. The procedure for the recruitment of employees at the service of local authorities are designed to ensure that the best employees are selected from the pool of candidates applying for the vacant or available positions, whereas the decisions of the administrative organs of Municipalities and Communities are subject to the review of the Administrative Court of Cyprus. In the event that a candidate wishes to challenge any such decision, he/she has the right to file an administrative recourse at the Administrative Court, where his rights will be examined and the whole administrative file documenting the procedure up to the issuance of the relevant decision will be scrutinized. These procedures act as safeguards of the legality of local authorities' decisions and ensure that the recruitment process is based on merit, competence and the skill required for the available position. Empirically, the demand for vacant or available positions at the service of Municipalities and Communities is considerable, since local authority personnel is considered as akin to civil servants and enjoy similar benefits, remuneration and career prospects, as well as terms of service.

Furthermore, Municipal and Community employees are encouraged to attend educational seminars pursuant to improving their skills, hence being provided with the training opportunities required by Article 6 paragraph 2 of the Charter. This is reflected in the Municipal Regulations of most Municipalities, which provide that series of training courses and other facilities may be arranged pursuant to improving the skills of employees in the execution of their duties and the acquisition of the qualifications required to progress, whereas at some instances personnel may be asked to attend classes and sit examinations.

Nevertheless, concerns still seem to prevail in respect of administrative structures and resources for the execution of tasks of local authorities due to the financial dependency of local authorities (especially smaller or rural Communities) on the provision of the annual State grant, which essentially deprives the Republic of Cyprus from full implementation of Article 6 paragraph 2. Consequently, it may be argued that Cyprus respects Article 6 paragraph 1 but it is only partially complying with Article 6 paragraph 2 of the Charter.

6 Conditions under which responsibilities at local level are exercised

Municipalities and Communities are governed by Municipal and Community Councils respectively, which are composed of democratically elected Councilors in accordance with the relevant provisions of the Municipalities and Communities Laws. Article 7 of the Charter essentially provides that the conditions of office of the Councilors have to allow the free exercise of their functions and appropriate financial compensation for expenses or loss of earnings incurred while performing their duties. Furthermore, Article 7 states that statutory provisions have to specify the functions and activities which are incompatible with the holding of local elective office. Whilst the issue of incompatibility of functions and activities with the holding of local elective office is regulated by statute, the conditions under which responsibilities at local level are exercised are largely unregulated by statute or by regulations. Complaints are frequently voiced in respect of the lack of adequate financial compensation for Councilors, especially in rural or smaller Communities, whereas both, the Municipalities and Communities Laws do not contain any provisions for the regulation of the legal standing of the elected members of local councils.

Both Laws make general provisions as to the right of local councils to exercise the powers of Municipalities and Communities, as well as general provisions regarding the composition of the local councils, the term of each councilor, the right to be elected in local authority office, the incompetency to be elected in office and the incompatibility of certain persons with holding local elective office.

Article 11(1) of the Municipalities Law provides that each Municipality Council consists of the Mayor and Councilors, the number of which is not smaller than 8 (eight) and not larger than 26 (twenty-six). Provisions are also made in the same article for the gradual increase in the size of Municipal Councils depending on the size of the electorate of each Municipality. For example, in Municipalities where the electorate ranges between 11.000 (eleven thousand) and 13.500 (thirteen thousand and five hundred) people, the Municipalities Law provides that the Municipal Council must consist of 14 (fourteen) Councilors. Where the Municipality electorate is lower than 6.000 (six thousand) people, the Municipal Council must consist of 8 (eight) Councilors and where the Municipality electorate is larger than 26.000 (twenty-six thousand) persons, the Municipal Council must consist of 26 (twenty-six) Municipal Councilors. In the event that either a complex of villages, or a complex of improvement areas and a village, are declared a Municipality and the number of councilors provided in the Municipalities Law (to correspond with the size of the population) is not at least double the number of villages and improvement areas consisting the Municipality, the Council of Ministers has the power to determine the number of Councilors, so that such number equals or exceeds double the number of the said villages and improvement areas (article 11(2)(b) of the Municipalities Law).

The Municipalities Law also makes provisions for incompetency and incompatibility with holding a local elective office. Article 16(1)(a)-(c) of the Municipalities Law provides

that persons of unsound mind, non-reinstated bankrupts and persons who have been convicted for an offence of dishonesty or moral obscenity within five years prior to the announcement of candidates for office are not competent to be elected as Mayors or Councilors. Moreover, under Article 16(2) Ministers, Members of the House of Representatives, judges, civil servants, municipal employees, teachers working in the public sector, employees of organizations of public law, police officers or army officers, priests or persons having any contractual relationship with the Municipality for the provision of services or the carrying out of work can be candidates for the position of the Mayor or Councilors, but they cannot take office unless they resign from their position or office or unless they are discharged of their contractual obligations or debts, as applicable. In the event that one of the aforesaid situations of incompatibility arise during the five-year term of a Mayor or a Vice-Mayor or a Councilor, then the person affected ceases to act as Mayor or Vice-Mayor or Councilor, as applicable, and his position is vacated and filled in in accordance with the Law.

The aforesaid incompatibility provisions are complemented by the provisions of the Incompatibility to the Exercise of the Duties of Certain Officials of the Republic, of Certain Professionals and Other Related Activities Laws which were enacted in 2008, as subsequently amended. These laws apply *inter alia* to Mayors, Members of Municipal Councils, the Chairmen of Community Councils and the Members of Community Councils. They specify the categories of activities that are incompatible with the exercise of specific duties, impose an obligation to disclose conflicts of interest, provide for the establishment of an Examination of Conflicts of Interest Committee, they invalidate acts which constitute conflict of interest and enact criminal offences in case of refusal or failure to appear before the aforesaid Committee. According to article 3 of the aforesaid law, acts that are incompatible with holding the office of a Chairman or a Member of a local council are *inter alia* the provision of legal, audit, accounting, advisory or other services to the State or any entity of public law, being a member of the board of directors or a general manager of a company, partnership or joint venture to which a contract has been granted for the supply of a product or the carrying out of a project or the provision of any service, as well as the capacity of the member of the board of directors of a public company or a company which is engaged with press and media. Compliance with the aforesaid provisions is taken seriously and it is within the mandate of the Auditor General to examine whether such acts come within the ambit of incompatibility provided under the aforesaid laws when auditing the local authorities' affairs.

Turning to Communities, it is noted that provisions similar to the aforesaid provisions of the Municipalities Law regarding their composition also apply for Communities, albeit with small differences to cater for the smaller size, needs and circumstances of the Communities. Article 11 of the Communities Law provides that every Community Council consists of the Chairman of the Community and its Community Council Members. The composition of the Community Councils depends on the size of each Community' electorate. For Communities of up to 300 (three hundred) registered voters 4 (four) Community Council Members are elected, for Communities with electorate

ranging between 301 (three hundred and one) and 700 (seven hundred) voters 6 (six) Community Council Members are elected and for Communities of more than 700 (seven hundred) voters 8 (eight) Community Council Members are elected. Councils of displaced Communities consist of the Chairman of the Community Council, the Deputy Chairman and 3 (three) Community Council Members irrespective of the number of registered voters.

It may be deduced from the above that although elaborate provisions are included in the Cypriot legislation regarding incompatibility which evidently render the Republic of Cyprus fully compliant with paragraph 3 of Article 7 of the European Charter of Local Self-Government, still there seems to be no legislative guarantee for the conditions of the free exercise of the Councilor's functions.

There are no statutory provisions regarding the size of the financial compensation of Mayors and Municipal Councilors for the time devoted in the performance of their duties and the loss of earnings incurred by reason of the execution of their duties as members of local councils. Article 52(1) of the Municipalities Law provides in general that the Mayor and the Municipal Councilors may receive such annual allowance, compensation and other benefits as provided in the annual budget of the Municipality which is approved annually by the Council of Ministers. As such, the allowances of Mayors and Municipal Councilors vary. In 2010, an agreement was reached between the Union of Municipalities and the Government, according to which Mayors would receive a sum which constitutes a percentage of the salary of the Members of the House of Representatives, ranging from 40% to 100% depending on the size of each Municipality in terms of population. According to the Audit Report of the Auditor General for the year 2016, the annual compensation paid to the Mayors of Nicosia (capital), Limassol, Larnaca, Paphos and Strovolos that year ranged from €62.656 to €70.635, whereas the compensation paid to smaller Municipalities was lower, and the average compensation paid to Mayors of Municipalities in 2016 was calculated to €47.883,44. Out of the 39 (thirty-nine) Municipalities, only the Vice-Presidents of 6 (six) Municipalities receive special increased allowances compared to Municipal Councilors and drawn from the last Audit Report of the Auditor General, i.e. for the year 2016, the average compensation paid to Councilors in 2016 is calculated to €82.491,46 per Municipal Council. Based on the same findings, the compensation of each Municipal Councilor of the Municipality of Nicosia in 2016 was €9.490,56, i.e. €790,88 per month, for the Municipality of Limassol €8.201,28, i.e. €683,44 per month, for the Municipality of Larnaca €7.176, i.e. €598 per month, for the Municipality of Paphos €6.151, i.e. €512,58 per month, for the Municipality of Strovolos €9.330,38, i.e. €717,72 per month, for the Municipality of Lakatamia €8.137,046, i.e. €678,01 per month and for the Municipality of Famagusta €6.323,27, i.e. €526,94 per month, whereas Councilors in the remaining Municipalities have received lower compensation.

According to the General Terms of Approval of Annual Budgets of Municipalities, the allowances and compensation paid to Municipal Vice-Presidents and Municipal

Councilors cannot exceed 15% of the allowance and compensation received by their Mayor, but the Audit Report of the Auditor General for the Year 2016 suggests that there were instances (four instances) that the allowance of Municipal Vice-Presidents exceeded the aforesaid percentage.

It has to be noted that by reason of their election as members of Municipal or Community Councils (including Mayors and Chairmen of Community Councils), members of Municipal and Community Councils are also *ex officio* members of the respective Sewerage and Drainage Board of each town. In this capacity, they participate in Board and Committee meetings and they receive additional allowances and compensation for their participation. Such lump sum amounts are decided and determined by the Boards themselves and they range on average between €60 - €70 per meeting.

As regards allowances and compensation of Chairmen of Community Councils for the performance of their duties, Article 48(1) of the Communities Law provides that they are allowed to receive compensation in accordance with the Chairmen of Communities (Compensation) Law. The latter Law, which applies only to communities which are not located within the Municipal boundaries of any Municipality or any area which was rendered inaccessible by reason of the Turkish invasion, provides in general that the compensation of Chairmen of Communities is paid by the Government. The size of such compensation is determined by orders of the Council of Ministers, given the right of the Council of Ministers to pay compensation to Chairmen of Communities in special instances. To date, 6 (six) orders of the Council of Ministers have been issued for the regulation of the compensation received by Chairmen of Communities, the latest being the Order of the Council of Ministers which was published at the Official Gazette of the Republic on 14.12.2007. The said Order determines the monthly compensation of the Chairmen of Communities on the basis of the electorate's size in each Community. For the period commencing 1.1.2010 until 31.12.2010, the Order provides that for Communities with up to 300 (three hundred) voters, the Chairmen of the Communities were entitled to €300 per month, for communities with more than 301 (three hundred and one) but less than 600 (six hundred) voters the Chairmen of the Communities were entitled to €400 per month, for Communities with more than 601 (six hundred and one) but less than 1.000 (one thousand) voters Chairmen of the Communities were entitled to €500 and for Communities with more than 1.001 (one thousand and one) voters Chairmen of the Communities were entitled to €600 per month. The Order provides that from 1.1.2011 onwards, these sums would be increased proportionately in accordance with the provision of salary increases to the employees of the wider Civil Service. In light of the freezing of salary increases in the Civil Service in recent years, the compensation and allowance of Chairmen of Community Councils seems to have ranged from €400 to €800 per month depending on the population size of each Community.

Despite the aforesaid provisions for the payment of monthly allowances and compensation to Chairmen of Community Councils, there seems to be no legislative provision for the payment of monthly or annual allowances or compensation to

Community Councilors. The latest Audit Report of the Auditor General for the year 2016 indicated that there were instances where Community Councilors received compensation or allowance in exchange for the performance of their duties, but recommendations were put forward for the return of such money as unjustifiably paid.

The lack of legislative or regulatory provisions enumerating the rights, allowance, compensation and legal standing of members of local councils, especially Mayors, Municipal Councilors and Community Councilors, as well as the fact that Community Councilors are not entitled to any allowance or compensation whatsoever for the performance of their duties as mentioned above, compromises the implementation of Article 7 of the European Charter of Local Self-Government. While paragraph 3 of Article 7 is fully implemented, paragraph 1 is partially respected but paragraph 2 seems not to have been implemented. Despite practical arrangements being in place regulating the payment of allowances and compensation, Mayors, Municipal Councilors and Chairmen of Community Councils have on numerous occasions voiced their demands for the increase of their allowances, whereas Community Councilors demand payment of reasonable allowances and compensation for the performance of their duties. Such increases and the enactment of legislative provisions for the regulation of the issue of financial compensation may be argued to create a sense of security and have beneficial effects for the Municipalities and Communities, since it is likely to encourage more people to participate in local authority elections.

7 Administrative supervision of local authorities' activities

Article 8 of the European Charter of Local Self-Government seeks to achieve a balance between the autonomy of local authorities to manage their own affairs and the interest of the central Government to supervise their activities. For this purpose, Article 8 provides that any administrative supervision of local authorities may be exercised in accordance with such procedures and in such cases as are provided by the Constitution or by statute. Any administrative supervision of the local authorities' activities has to aim at ensuring that the local authorities comply with the law and the Constitution and it has to be exercised in such a way as to ensure that the intervention of the State is proportional to the importance of the interests which it is intended to protect. Cypriot local authorities are supervised by a handful of State and Independent actors, i.e. the District Officer, the Minister of Interior, the Auditor General and the Council of Ministers, whose approval is required for the execution of certain tasks mentioned in the Municipalities and Communities Laws. It has been argued in the past that the supervision over local authorities exceeded the spirit of Article 8 of the Charter and the Congress of Local and Regional Authorities of the Council of Europe has argued after its last monitoring visit at the Republic of Cyprus in 2016 that great influence is exercised on the day to day activities as well as on the strategic decisions of local councils, having as a result for the requirements of Article 8 not to be fulfilled.

Given the fact that the State subsidizes local authorities with annual grants, rightfully the State has the right to supervise the use of such funds, as well as undertake audits of local authorities, since they are managing public property and money. This task is delegated to the Auditor General, who undertakes annual audits and publishes annual audit reports pursuant to Article 116(4) of the Constitution. According to Article 115(2) of the Constitution of the Republic of Cyprus, the Audit Service of the Republic is an independent service which is not subjected to the authority of any Ministry of the Republic. The Auditor General undertakes audits in the name of the Republic in accordance with Article 116 of the Constitution for every payment or receipt of money, as well as all assets and liabilities of the Republic and he/she has the right to inspect all the relevant accounts, book, archives, statements and places where such documents are stored. The aforesaid power of the Auditor General is integrated in the Municipalities and Communities Laws, since the authority of the Auditor General extends to the audit and supervision of local authorities too.

The power of the Auditor General to undertake audits of the annual accounts of Municipalities is provided in article 81 of the Municipalities Law. According to the said article, after the end of each financial year, each Municipality has the obligation to prepare and submit to the Auditor General their annual accounts. Specific provision is made to the effect that the economic transactions of the Municipalities, their accounts and generally their financial administration are all audited by the Auditor General. Upon the audit of the annual Municipal accounts, the Auditor General sends them to the Municipality, the House of Representatives and the Minister of Interior, who arranges their publication at the Official Gazette of the Republic. Apart from the aforesaid general audit authority, the Auditor General does also have the power to call any member of the Municipal Council and any employee of the Municipality for the purpose of providing him/her with information, explanations, minutes, books, contracts, accounts, invoices or any other document which is required for the audit undertaken by the Auditor General (article 82 of the Municipalities Law). Failure or omission to provide any of the requested documents or information constitutes a criminal offence punishable with a fine. Similar provisions are included in the Communities Law, articles 71 and 72, with the addition that displaced communities with income of less than €5.000 per year do not file annual accounts to the Ministers of Finance and Interior in accordance with the internationally recognized accounting principles but rather, they file annual accounts to the District Officer for the purposes of assuring the information included therein. Thereafter, the District Officer communicates them to the Auditor General for his/her observations.

The aforesaid supervision of the Auditor General constitutes an *ex-post* measure of supervision within the ambit of Article 8 of the European Charter of Local Self-Government which is indeed proportional to the importance of the interests which it is intended to protect given that the local authorities collect and manage public money. Nevertheless, administrative supervision of local authorities is not restricted solely to *ex-post* checks but rather extends to *a priori* measures of financial supervision which are not in compliance with the provisions of Article 8 of the European Charter of Local Self-

Government. Specifically, Municipalities and Communities have the obligation to submit their annual budgets for approval to the Council of Ministers prior to their implementation and key decisions, actions and activities may only be implemented upon securing the prior approval of the Council of Ministers or the District Officer, as applicable.

Article 65 of the Municipalities Law provides that the annual regular budget of income and expenditure, as well as the development budget of the Municipality are prepared in accordance with the provisions of the Municipalities Law and they are submitted to the Municipal Council and the Council of Ministers for approval prior to the 31st of October of the year prior to the commencement of the year to which they refer. The aforesaid budgets are prepared by the Administrative Committee of the Municipality (article 66(1) of the Municipalities Law), which is composed of the Mayor and Municipal Councilors, and upon being approved by the Municipal Council, they are sent to the Minister of Interior and the District Officer. Subsequently, the Minister of Interior submits them to the Council of Ministers together with his recommendations and observations for approval.

In the event that the annual regular Municipal budget or the annual development budget of any Municipality is not approved by the Council of Ministers until the commencement of the year to which they refer, the Council of Ministers may authorize the undertaking of municipal expenditure for a period not exceeding one month each time and in any event not exceeding two months in total, provided that the Council of Ministers deems this appropriate for the continuation of the services provided in the budget (article 66(2) of the Municipalities Law). Such authorized expenditure may not exceed the corresponding expenditure approved in the previous budget.

After the 31st of May and pursuant to Article 66(4) of the Municipalities Law, the Council of Ministers may approve expenditures made by the Municipal Council in excess of the approved fund for an approved purpose included in the annual budget if this is necessary for the continuation of the provision of the approved services or for the smooth and unobstructed operation of the Municipality, provided that such an expenditure shall not exceed 10% of the approved fund.

The obligation to submit budgets for approval is also born by Community Councils and it is included in the Communities Law. Article 64(3) of the Communities Law states that the annual budget of the Community Council is submitted to the District Officer for approval until the 30th of November of the year which precedes the financial year to which it refers, and the District Officer examines the legality of the budget within a month from its submission from the Community Council. The Community Council may spend a sum of money which does not exceed the 20% of the fund for the expenditure which was included in the budget and approved, provided that this additional sum is saved from any other or from other funds which were approved in the same budget. The District Officer may reject the budget only if it contradicts the provisions of the Communities Law, whereas upon approval by the District Officer, a copy of the approved budget of the

Community is sent to the Auditor General of the Republic pursuant to article 65 of the Communities Law. Thereafter, it is the duty of the Chairman of the Community Council to provide for the execution of the decisions of the Community Council, as well as to arrange for the expenditure required for the execution of the decisions to be in accordance with the approved budget (see article 43 of the Communities Law).

Further to the above and as mentioned in previous sections of this report, Municipalities and Communities have further limitations and restrictions when it comes to the power to obtain loans, secure mortgages over municipal property in exchange for the receipt of loans, acquire immovable property, establish local market areas and radio stations, create artisanship areas, establish and operate of parks, gardens, courses, swimming pools, entertainment establishments and youth centers, plant trees across streets, issue swimming regulations, impose entertainment charges and hotel fees, promote intellectual activity and sign contracts for the creation of public utility projects. All of the aforesaid activities and actions of key importance require the prior approval of the Government, which is indeed another form of proactive administrative supervision of local councils.

The aforesaid forms of administrative supervision, in combination with complaints regarding the exertion of influence by the Government over local councils has caused the reaction of the Congress of Local and Regional Authorities of the Council of Europe during its delegation last monitoring visit in Cyprus in 2016. The Congress is of the opinion that the requirement of the prior consent or approval of the Government for the undertaking of important activities and the implementation of key decisions, as well as the reported influence of the central Government over local authorities is such that exceeds the legal control over local governments' acts provided under Article 8 of the European Charter of Local Self-Government. Consequently, the Republic of Cyprus is not in compliance with the provisions of Article 8 of the Charter.

In its Recommendation 389 (2016) for the local democracy in Cyprus, the Congress expressed concern at “the importance of government supervision over the exercise of the regulatory powers of local authorities and over the personnel, administrative and budgetary resources, and the current lack of clarity concerning the administrative authorities entitled to exercise such supervision over municipalities”. In light of this concern, the Congress suggested that the Republic of Cyprus should “*provide adequate financial resources for local authorities, which would be commensurate with their responsibilities and which they may dispose of freely within the framework of their powers*”, as well as “*limit every kind of government supervision over local governments to an ex post control of the legality of the administration and regulation of the municipalities and communities, and relinquish the power of government to approve the budgets of all local authorities prior to their implementation*”.

8 Financial resources of local authorities and financial transfer system

An essential component of the principle of local self-government is the ability of local authorities to manage and dispose freely of their financial resources. The principle of financial autonomy is enshrined in Article 9 of the European Charter of Local Self-Government, which provides *inter alia* that 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. Such financial resources have to be commensurate with the responsibilities assigned to them by law, as well as of sufficiently diversified and buoyant nature to enable the local authorities to cover the expenses necessary to perform their duties. At least part of them shall derive from local taxes and charges imposed by the local authorities at the rate chosen by them and the grants provided to them by the Government must not be earmarked for the financing of specific projects, whilst borrowing must be available to them through access to the national capital market. Furthermore, financial equalization procedures have to be present in order to provide for financially weaker local authorities and ensure equality in the distribution of Government grants. Whilst Cyprus seems to cope well with some parts of Article 9 of the Charter and despite local councils having different streams of financial resources available to fund their operations, still the existence of legal and practical limitations deprives the Republic of Cyprus the full implementation of the Article 9 of the Charter and the State needs to take steps in order establish a method of calculating the allocation of central government grants to local authorities, as well as remove legal impediments to the free disposal of their financial resources.

The financial resources of local authorities derive from the so-called “own resources”, namely fees and duties, taxes and local property tax income, as well as State grants. Commencing from the latter, the national legislation imposes the obligation on the State to subsidize the local authorities’ budget of expected inflows and outflows. With regard to Municipalities, article 67 of the Municipalities Law provides that the budget of expected inflows and outflows of the Municipalities is annually subsidized through the provision of grants suggested by the Council of Ministers and approved by the House of Representatives, whereas under article 68 of the same Law, the Municipal Treasury is composed *inter alia* of the State grant. Likewise, Article 65 of the Communities Law provides that the Community Treasury is composed *inter alia* of grants provided by the State.

The size of the State grant and the methodology for the calculation of such grants is not determined by the respective Laws or any regulations; rather, it is determined annually by the House of Representatives during the House’s deliberations for the approval of the annual National Budget. As regards the size of the annual State grant provided to the Communities, this is determined on the basis of various parameters such as population and altitude, whereas displaced Community Councils are provided with an annual State grant of €1.000 for the purposes of covering their operational and other expenses. The absence of any determined or statutory methodology for the calculation of the size of the

annual State grant provided to local councils has as a result for the size of the grant to vary both, amongst different local authorities and for the same local authority in different years.

Based on the contents of the annual National Budgets in recent years, it is evident that the size of the annual grant provided to local authorities has decreased relatively to the past decade, whereas the percentage of the annual State grant provided to local authorities in comparison to the total revenues of the local authorities has ceased to be the majority; local authorities' "own financial resources" seem to constitute the majority of the local authorities' budgets in general. Nevertheless, the local government expenditure as a percentage of the Gross Domestic Product has been maintained at very low levels, i.e. at about 1,5% approximately.

As mentioned above, apart from the annual State grant, the local authorities' financial resources are made up of their own income generation streams. Firstly, local authorities have the power to impose a local immovable property tax, which is separate and additional to the Immovable Property Tax which used to be imposed by the State and collected by the Government until 2016 (abolished as from the 1st of January 2017). The proceeds from the imposition of the local immovable property tax are not considerable and according to the Ministry of Finance, they are calculated to about 1% approximately of the total income of the local councils.

As regards municipalities, the imposition of the municipal immovable property tax by municipalities is regulated by articles 73 to 79 of the Municipalities Law. According to article 74 of the Municipalities Law, the Municipal Council imposes an annual tax at a rate not exceeding 0,24‰ of the value of each piece of immovable property in respect of all the immovable property which is located within the geographical area of the Municipality in which the Council exercises its jurisdiction, whereas the value of each piece of immovable property is taken from the last General Valuation which is undertaken by the Republic through the Land Registry and all the proceeds from the collection of such local tax are deposited in the municipal treasury. The law provides (article 75 of the Municipalities Law) that no municipal immovable property tax is imposed or collected on cemeteries, churches, mosques, hospitals, listed buildings, ancient monuments, property held in trust for any public school, properties used by charitable institutions, property belonging to the Republic or to any Municipality or to any sports club, State or public property. The local immovable property tax is payable by the registered owner of same, as recorded in the books of the competent District Land Registry. In 2017, by an amendment of article 74 of the Municipalities Law, the mode of imposition of the municipal immovable property tax changed; instead of the power of the Municipal Councils to impose a uniform tax of 1,5‰ of the value of the property per annum, the aforesaid law was amended so that the Municipal Councils were enabled to impose local immovable property tax at a rate of up to 0,24‰ of the value of the property per annum. Evidently, the size of the tax imposed was lowered significantly, but each Municipal

Council was afforded with the discretion to determine the rate of the municipal immovable property tax imposed upon its residents.

Similar provisions apply to communities and the relevant statutory provisions are provided in articles 74 to 80 of the Communities Law, albeit with some differences compared to the relevant provisions of the Municipalities Law. More specifically, article 75 of the Communities Law provides that the community immovable property tax may not exceed the rate of 10% of the value of the property per annum, whereas the minimum amount of tax payable per immovable property cannot be lower than €1,71 per annum. Upon determination of the rate of the community immovable property tax, the amount of payable tax is calculated by the Director of Lands and Surveys pursuant to article 76 of the Communities Law. Furthermore, article 78 of the Communities Law provides that where the community immovable property tax cannot be collected by the registered owner of the immovable property, it can be collected with the same way by its legal occupier.

Apart from the imposition of local immovable property tax, the local authorities also impose duties on persons and entities for the exercise of professional activities. As regards Municipalities, article 103 of the Municipalities Law provides that nobody has the right to maintain within the geographical area of the Municipality any building or place or premise in which any business, industry, trade, profession or undertaking is performed, except if he/she has previously obtained a relevant permit from the Municipal Council. For the purpose of securing the said permit, the Municipality has the right to impose duties in accordance with the Seventh Table of the Municipalities Law, whereas a separate annual duty is imposed on legal entities, i.e. companies and partnerships, for the exercise of any business, industry, work, trade, undertaking or profession within the municipal boundaries. The provisions of the Municipalities Law dealing with the size of such duty are formulated as maximum allowed lump sum amounts which each Municipal Council may impose. Communities also have the right to impose such duties in accordance with articles 85 to 91 of the Communities Law, but the duties payable for the same purpose are significantly lower compared to Municipalities.

Additionally, Municipalities impose refuse collection taxes pursuant to article 84(z) and Table Six of the Municipalities Law, as well as entertainment tax pursuant to articles 85 and 87 of the Municipalities Law, the latter constituting a lump sum amount imposed on persons engaging in business in the entertainment industry for every admission ticket sold and the tax is payable by the person purchasing the ticket as part of the ticket's price. Each Municipality is left with the power to issue regulations governing the imposition and collection of the entertainment tax.

Furthermore, Municipalities and Communities impose lodging tax on hotels and other tourist establishments for the stay of every person over the age of 10, which may not exceed the sum mentioned in the respective Laws. These sums range from 18 cents per

person per night to 60 cents per person per night depending on the type of accommodation and standard of the hotel.

Moreover, the financial resources of local authorities extend to the payment of fines and other administrative charges, including and without limitation to the collection of fees payable for the submission of applications for town planning and building permits and parking fines, as well as the proceeds from the use of municipal property and the establishment or participation in private companies for the provision of services to the public. Sewerage and drainage fees, i.e. fees for the use or entitlement to use the sewerage and drainage system of each local authority having such systems, are charged by separate entities, namely the Sewerage and Drainage Boards. These Boards are organizations of public law themselves, but their boards consist of local councilors and their (i.e. Boards) obligations are guaranteed by the Government.

The above suggest that local authorities in Cyprus enjoy a degree of financial autonomy. They have the ability to impose taxes, fees, charges and duties which make up the majority of their expected inflows, and they receive State grants that they may use in order to cover the expenditure required to perform the operations permitted by law. Nevertheless, existing limitations indicate that there is no full compliance with Article 9 of the European Charter of Local Self-Government. Firstly, the requirement of prior approval of the local authorities' budget by the Council of Ministers and the House of Representatives, as discussed in previous sections of this report, is incompatible with paragraph 1 of Article 9 of the European Charter of Local Self-Government, which provides *inter alia* that local authorities must have the liberty to dispose of their financial resources as they wish within the framework of their powers. The fact that local authorities receive and collect public money is an understandable consideration; still, the fact that the members of the local council are democratically elected by the residents of their respective local communities endows them with the legitimacy to take themselves decisions regarding the management of the local council's financials. Furthermore, the Congress observed in its Recommendation 389 (2016) on the Local Democracy in Cyprus that local authorities do not have adequate financial resources to exercise their powers, leading to a dependency of local authorities and especially small communities, on the State.

Concerns about the exertion of increased influence over local authorities when preparing or approving their annual budgets is another factor counting in favor of providing further liberty to local councils to manage their financial resources, provided that such financial administration is prudent and compliant with the principles of good governance. Furthermore, the lack of specific methods for the calculation of the amount of State grant that each local council shall receive per year does not allow them to plan effectively, especially in light of the size of the State grant's proportion in the local council's expected annual inflows. No investigation into the needs of each local authority precedes the allocation of the annual State grant to local authorities, but rather the yardstick seems to

be solely the amount of the State grant provided the previous year. As a result, there are no means to examine whether paragraph 2 of Article 9 of the Charter is observed.

As the law stands today, provision is made for the annual subsidization of the local councils' budgets but it does not provide or establish a mechanism for the consultation of the local authorities prior to deciding as to the size of the annual State grant which is provided to the local authorities. The lack of any provisions in the Municipalities and Communities Laws for this purpose indicates the absence of legal safeguards of the principle of prior consultation enshrined in paragraph 6 of Article 9 of the Charter.

Despite the above, paragraph 3 of Article 9 of the Charter is fully implemented, since indeed part of the financial resources of local authorities derive from local taxes and charges of which the local councils have the power to determine their rate.

Paragraphs 4 and 5 of Article of the Charter are not implemented. On the one hand, there are no equalization provisions in either the Municipalities or the Communities Laws and hence there are no systems in place to counterbalance financial discrepancies amongst local authorities or impose the obligation on wealthier local councils to provide financial assistance to smaller communities. Hence, there is no means of ensuring the same standard of public services to the residents of all local authorities, leading to a conclusion of non-compliance with paragraph 5 of Article 9 of the Charter. As regards the provisions of paragraph 4 of the Article 9, the aforesaid system of financial resource management does not seem to allow a flexible structure that could enable local councils to increase their revenues in case of financial difficulties, especially in light of the caps imposed on the imposition of taxes and duties, as well as the fact that a lot of local councils experience financial difficulties but they do not seem to have the means to overcome them with ease.

Turning to paragraph 7 of Article 9, compliance with the provisions of this paragraph is debatable given that most development projects are financed by the Government and that such funding is included in the approved annual budgets. Lastly, Cyprus seems to comply to some extent with paragraph 8 of Article, since the local councils do have the power to receive loans; nevertheless, such loans may only be obtained upon securing the Council of Ministers' prior approval.

9 Local authorities' right to associate

Article 10 of the European Charter of Local Self-Government seeks to afford local authorities with the right to co-operate with other local authorities and both, domestic and international associations of local authorities in order to perform their duties and promote their common interests. The Republic of Cyprus fully respects this requirement of the Charter through the Municipalities and Communities Laws which provide for the creation and operation of the Unions of Municipalities and Communities respectively. In practice, the two Unions co-operate and they jointly protect and promote the interests of local authorities in Cyprus by representing the Cypriot local authorities in consultations and

meetings with the representatives of the Government, the House of Representatives and the State in general. The local authorities are also represented abroad and initiatives are in place which encourage local authorities to exchange views, perform visits and participate in joint meetings directed at addressing and discussing issues of common interest.

According to the Municipalities and Communities Law, all municipalities and communities which are created pursuant to the said Laws may be registered as regular members of the Union of Municipalities of Cyprus and the Union of Communities of Cyprus, respectively. These local authorities have the right to participate through their representatives in the Unions' operations along with the existing regular members of the Unions. The purposes of the Unions are enumerated in the aforesaid Laws and they include the operation of the Unions as collective organs representing the local authorities at a national and international level pursuant to the promotion and the protection of their interests and pursuits, the provision of assistance to local authorities for the promotion of local self-government, the undertaking of research and the study of issues relating to municipal self-government and the collection of information regarding these issues, as well as the formulation of their views concerning draft bills affecting local authorities and activities regarding public self-government. Both Unions are considered as clubs in accordance with the Clubs and Charitable Institutions Law of Cyprus.

Apart from the above, the Communities Law also provides for the co-operation amongst Communities through the creation of Complexes. More specifically, article 7 of the Communities Law provides that the Minister of Interior is obliged to declare two or more neighborly communities as a Complex of Communities upon their application. The wish of communities to establish complexes is expressed through a referendum ordered by the Minister of Interior and undertaken amongst the registered electorate of the Communities involved, pursuant to examining whether or not they wish to form a Complex. In the event of a community which does not have registered electorates, the Council of Ministers may, at its discretion, decide the participation of a community in a Complex if the circumstances and generally the public interest necessitate it. Upon the undertaking of a referendum as mentioned above, a second referendum may only take place after the lapse of 4 (four) years from the date that the previous referendum took place.

The Communities Law also makes provisions for the withdrawal of a Community from a Complex, as well as the abolition of a Complex. The withdrawal of a Community from a Complex consisting of more than two Communities is possible by an order of the Council of Ministers, issued in the event that the two thirds of the electorate of a Community participating in the Complex vote in favor of the withdrawal of their Community from the Complex (article 9 of the Communities Law). If the Community does not have any registered electorate, the Council of Ministers may decide the withdrawal of the Community from the Complex on the Community's behalf. Likewise, a Complex is abolished upon an order of the Council of Ministers if two thirds of the registered

electorates of a Community vote in favour of the abolishment of the Complex at a referendum (article 9 of the Communities Law).

According to a feasibility study prepared by PwC for the purposes of the ongoing discussions for the modernization of local self-government in Cyprus, there seem to be 70 (seventy) formed Complexes of Communities, formed for different purposes (PwC, *Results of techno-economical study regarding the operation of Service Complexes*, 2018). The purpose of the formation of Complexes is the joining of forces in the provision of services to the residents and both, the formation and operation of Complexes is mostly unofficial. The aforesaid study reports 45 (forty-five) Complexes formed by 245 (two hundred and forty-five) Communities for the purpose of providing refuse collection to their residents, 13 (thirteen) Complexes formed by 36 (thirty six) Communities for the purpose of providing office services, 4 (four) Complexes formed by 17 (seventeen) Communities for the purpose of establishing a common sewerage system, 5 (five) Complexes formed by 14 (fourteen) Communities for the provision of common handymen, 1 (one) Complex formed by eight Communities for the purpose of extinguishing mice, 1 (one) Complex formed by five Communities for the purpose of transferring water and 1 (one) Complex formed by two Communities for the purpose of establishing a common Community Council House.

In light of the above, the right of local authorities to associate, as provided in Article 10 of the European Charter of Local Self-Government, is implemented and fully respected in the Republic of Cyprus. The Unions of Municipalities and Communities constitute competent lobbies directed towards the promotion of the interests of Cypriot local authorities in Cyprus and abroad. Apart from the association of the local authorities at a Union level, Communities have taken the initiative to co-operate for the provision of services to their residents, achieving in this way in practice the aim that paragraph 1 of Article 10 seeks to achieve, even informally. The ongoing discussions for the reform of local self-government include the formal recognition of Complexes and the creation of new Complexes pursuant to utilizing economies of scale and better serving the public, while at the same time making more efficient utilization of resources.

10 Legal protection of local self-government

Article 11 of the European Charter of Local Self-Government provides that local authorities must 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 in the constitution or domestic legislation. The provisions of Article 11 refer to a possible intervention of the central Government in the performance of functions which are located within the ambit of the local authorities' jurisdiction, as well as the acts of the Government or the State which contravene the principles of local self-government enshrined in the constitution or the legislation.

Since local authorities are legal entities in the eyes of the law pursuant to the provisions of the Municipalities and Communities Laws, they also enjoy the constitutional protection against illegal or improper acts of the State. Actionable administrative acts of the Government or any Governmental or independent body may be challenged pursuant to Article 146 of the Constitution of the Republic of Cyprus through the filing of a recourse at the Administrative Court within 75 (seventy-five) days from the publication of the said act or decision, or in the event that no publication took place, within 75 (seventy-five) from the date that the said act or decision came to the attention of the person or entity affected by it.

Article 146 of the Constitution provides that the Administrative Court has exclusive jurisdiction to decide at first instance on any recourse filed against a decision, act or omission of any body, authority or person performing an executive or administrative function by reason of being contrary to the provisions of the Constitution or the law or made in excess or abuse of power. The Administrative Court may ratify the said decision, act or omission, declare it as null and void, or amend the act or decision in issue provided that it regards a tax issue or an international protection procedure in accordance with the law of the European Union. The judgment of the Administrative Court on a recourse, or the judgment of the Supreme Court on an appeal of the judgment of the Administrative Court, binds all Courts, bodies or authorities in the Republic and the organs, authorities or persons affected by it have the obligation to comply. The Court issuing a final decision over an administrative matter has the right to examine whether or not there has been active compliance with the judgment and in the event of non-compliance to impose penalties, whereas any person incurring damage by reason of any act or decision held null and void by the Administrative Court may file an action against the issuing authority and claim damages/compensation for his/her loss.

The existence of Article 146 of the Constitution and its application on local authorities affords the latter with a remedy against illegal acts of the central Government or acts which are not in accordance with the principles of Administrative law, as provided in the General Principles of Administrative Law. There were instances in the past that local councils filed recourses against the decisions of the Government or independent authorities, making in this way use of the constitutional remedies provided by Article 146.

Nevertheless, it has to be noted that the failure of the Constitution and the legislation to provide for the explicit endorsement of the principle of local self-government or the free exercise of the local councils' powers does not afford local authorities with full protection under Article 146. The existence of detailed provisions for this purpose in the Constitution or any piece of legislation would enhance the protection of the local authorities since it would render any usurpation of the local councils' functions illegal and prohibit the Government from interfering with the principle of local self-government.

The current legal status of the European Charter of Local Self-Government in the Cyprus legal system does not afford local authorities with adequate remedies against

Governmental intervention in the local authorities' affairs. As mentioned above, in the case of *In re Pantelides* (above) the Supreme Court of Cyprus interpreted the European Charter of Local Self-Government as a non-self-executing act, leading to the inability of the local authorities to invoke the Charter for the establishment, protection and pursuance of effective safeguards to the principle of local self-government.

In light of the above, it may be argued that the Republic of Cyprus copes well with Article 11 of the European Charter of Local Self-Government, albeit with room for further implementation through the recognition of the principle of local self-government in the Constitution or the Municipalities and Communities Laws.

11 Proposed reform of local self-government in Cyprus

According to the Explanatory Note of the Ministry of Interior issued on 12 March 2020 with regard to the bill "The Municipalities Law of 2020", the Ministry of Interior in the context of ongoing consultation with the Union of Cyprus Municipalities (UCN), set up a group of technocrats and appointed an external expert to carry out a study which analysed the population, geographical and economic criteria and indicators and suggested various merger scenarios. The study showed that there is a large number of municipalities with limited financial and administrative autonomy, as well as that the viability of most municipalities is based solely on the state grant.

Based on the results of the study, a series of individual meetings of the Minister of Interior with the Executive Committee of the UCN took place. The Ministry, adopting at the same time the recommendations of the Congress of Local and Regional Authorities of the Council of Europe, made significant variations of the existing legislation, adopting several of the UCN recommendations, so that the municipalities will become financially autonomous, administratively independent, but also viable. Therefore, a new text of the Municipalities Law was prepared with a view to its overall modernization, which secured the unanimous support of the General Assembly of the UCN. Apart from introducing administrative autonomy, the new municipalities will have increased competences and powers, will be financially independent from the Central Government which will only exercise control over the legality of their actions.

The reform will regulate a new system in which the municipalities will have increased responsibilities and will be able to pursue a substantial policy through their administrative and financial independence from the Central Government. In other words, they will become real local governments, as set out in the European Charter of Local Self-Government. A new model of municipal governance by the mayor is also introduced, who will be elected in a single election and will be the head of municipal services; the deputy mayor and the councillors will be elected by the voters of each municipal unit. In the bill, there is a provision for the first election of the municipal councils to take place in 2024, simultaneously with the elections for the Members of the European Parliament (there is a similar provision in the bill regarding the Communities (Amending) Law of

2020). During the transitional period, the bill provides for the establishment and operation of councils for the management of common affairs, which will contribute to the smooth transition to the new operating framework. With this arrangement, election costs will be reduced, since the municipal and community elections will be held at the same time with the elections for the Members of the European Parliament.

Moreover, according to the said Explanatory Note of the Ministry of Interior with regard to the bill “The Communities (Amending) Law of 2020”, it is stated that following the submission of the amending bill in 2015, there have been some suggestions/comments by the Union of Cyprus Communities (UCC), which, among others, proposed the conducting of a study for the creation of local complexes in the communities, with reference to the financial parameters. The Ministry of Interior adopted the suggestion of UCC and agreed to fund the said study, which was assigned by UCC to PwC. This study was completed and delivered in April 2018 and apart from the proposed complexes in each district, it indicated the services that the complexes would be able to provide. The Ministry of Interior, adopting the suggestions of the study but also those of UCC, restructured the Communities (Amending) Law bill of 2015, incorporating provisions for the establishment and operation of 32 Local Service Complexes.

The aforesaid new bill also provides that the revenue budget of each community will be subsidised annually with a grant by the Republic to be proposed by the Council of Ministers and approved by the House of Representatives. Within this framework and for the financial support of the communities, but also of the Local Service Complexes which will be established, the Ministry of Interior intends to submit a proposal to the Council of Ministers in due course so that the annual state grant to the communities to be increased in line with the increase in the revenues of the municipalities from the transfer to them of the road tax and in proportion with the population of the communities.

It is noted that the Congress of Local and Regional Authorities of the Council of Europe was consulted as to whether the merging of municipalities and communities without holding referendums for the creation of the new municipalities is legal and whether this is in line with article 5 of the European Charter of Local Self-Government. According to their reply dated 7.2.2020, it appears that the actions of the Ministry of Interior are fully in line with the provisions of the European Charter of Local Self-Government.

12 Future challenges of the implementation of the European Charter of Local Self-Government in Cypriot legislation

It is evident from the above that albeit its challenges and the existence of considerable room for improvement, the local self-government system in the Republic of Cyprus is generally coping well with the requirements of the European Charter of Local Self-Government, especially when compared to other local democracies of similar size in the European Union. The main challenges of the implementation of the Charter revolve around the need to afford the local authorities in Cyprus with greater autonomy, confer to

them more meaningful responsibilities and enhance the availability of local authorities' resources for the exercise of their powers, whilst a resolution of the Cyprus problem will certainly pose new challenges for the implementation of the Charter in the Cypriot legislation in the future.

As regards the status of local authorities in Cyprus, the very absence of express recognition, acknowledgment and protection of the principle of local self-government in the Constitution or any other piece of national legislation is indicative of the challenges currently faced by Municipalities and Communities. In practice, local authorities in Cyprus are not fully self-governed; rather, they are operating under the direct and considerable authority and supervision of the central Government, who has the power to take key decisions in the life and processes of the local authorities. More specifically, the local authorities are obliged to submit their annual budgets for approval prior to the determination and distribution of the annual State grant. This legislative requirement compromises the goal of autonomy that the Charter purports to achieve, since the annual budgets are required to be submitted for prior approval rather than just for reporting/information purposes. Arguably, this requirement is not unreasonable given the fact that the local authorities receive an annual State grant, which covers the greatest part of the local authorities' financial needs for the year. Hence, the administration of money collected from the public may be argued to necessitate such *ex-ante* control. Nevertheless, such money is directed towards the service of the residents of Municipalities and Communities, and consequently they return back to the taxpayer's service, either directly or indirectly. The very essence of local democracy is to trust and allow discretion to local officeholders elected by the public to administer public money in accordance with what they feel is best for their local community. If such expenditure is contingent to the prior approval of the State, then the aim of local self-government is essentially compromised, especially in light of the absence of express methodology for the calculation of the size of the annual State grant distributed to each local authority. The relinquishment of the power of the State to pre-approve the local authorities' budgets, the endowment of local authorities with greater flexibility in the administration of their financial affairs and the restriction of State supervision to *ex-post* controls of legality of the administration rather than *ex-ante* prerequisite are indeed both, a legal and political future challenge of the implementation of the Charter in Cypriot legislation.

Related to the above is also the need to empower local authorities to build up significant fund-raising capacity and earn all the financial resources necessary to perform their functions without depending entirely on the annual State grant. Empowering local authorities with the ability to secure a great part of all the financial resources that are necessary in order to execute their functions and perform their responsibilities is key to the enhancement of the local authorities' autonomy and the full implementation of the European Charter of Local Self-Government.

Such a goal may be achieved by endowing local authorities with greater responsibilities and genuine local government functions, including the collection of taxes which are

currently paid to the Government instead to the local authorities, as well as the consolidation of services in the local authority level for the minimization of expenses and the utilization of economies of scale. The assignment of substantial powers and responsibilities to local authorities so that they can exercise them fully and exclusively in practice and in accordance with the principle of subsidiarity will undoubtedly shift control of the local affairs away from the central Government and towards the local communities, through sustaining relevant amendments in the Municipalities and Communities Laws. The discussion for the reform of local self-government which has been ongoing in recent years has touched upon the devolution of more powers and more meaningful responsibilities to local authorities at some limited extent but the deliberations amongst all actors involved have not been fruitful to date. The reform of the local self-government system in Cyprus and the grant of more functions, responsibilities and powers to the local authorities is itself a challenge and the conclusion of this endeavor is a development to be welcomed especially by Communities which do not have the necessary financial resources, administrative personnel and capacity to discharge their responsibilities and execute their functions.

Furthermore, it should be noted that a significant sociolegal challenge faced by the Republic and the society in general is the lack of public interest in participating in the regulation of local affairs, especially by competent persons who wish to contribute to their Municipalities and Communities. Such trust and interest may be recovered and regained through the employment of appropriate legislative measures, including the determination and increase of the remuneration and compensation of local councilors for the execution of their duties. At present, the Republic of Cyprus has still not ratified Article 7 paragraph 2 of the Charter which requires the Member States ratifying the Charter to allow for appropriate financial compensation for expenses incurred in the exercise of the office in question, as well as appropriate compensation for loss of earnings or remuneration for work done and corresponding social welfare protection. The regulation of the aforesaid issue by legislative means will evidently lead to the removal of the last exception to the ratification of the Charter by the Republic of Cyprus.

Lastly, a successful conclusion in the future of the ongoing talks for the resolution of the Cyprus problem will undoubtedly inhere new challenges to local democracy and the implementation of the provisions of the Charter, since new legislative provisions will need to be employed in order to cater for the new *status quo* and ensure legal and practical implementation of the European Charter of Local Self-Government across the whole island.

References:

- Ministry of Interior (2020) Explanatory Note of the Ministry of Interior, March 12, 2020 (Athns: Ministry of Interior).
- Pavlidis, A. (1986) *Η Μεγάλη Κυπριακή Εγκυκλοπλέδια*, (transl. in English: “*The Great Cypriot Encyclopedia*”), Vol. 4, (Nicosia: Philokypros).
- Tornaritis, C. (1972) *Η Τοπική Αυτοδιοίκηση στην Κύπρο*, (transl. in English: “*The Local Self-Government in Cyprus*”).