

# The Congress of Local and Regional Authorities



## Chamber of Local Authorities

**18<sup>th</sup> SESSION**  
**CPL(18)4**  
24 February 2010

## Local democracy in Portugal

Institutional Committee  
Rapporteur: Davor ZMEGAC, Croatia (L, ILDG<sup>1</sup>)

### *Summary*

This report follows a fact-finding visit made in 2008 on the basis of a complaint which the Congress received from the National Association of Municipalities of Portugal (ANMP), relating to the new Law on Local Finance (Law No. 2/2007). The aim of the report is therefore to determine whether this law is in conformity with the European Charter of Local Self-Government. In this respect, it concludes that the situation in respect of local finances in Portugal has generally improved since the previous monitoring report. This report also contains some information about parishes (freguesias) and some considerations about the legitimacy of the presence of parish representatives as members of the Portuguese delegation to the Congress.

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<sup>1</sup> L: Chamber of Local Authorities/R: Chamber of Regions  
ILDG: Independent and Liberal Democrat Group of the Congress  
EPP/CD: Group European People's Party - Christian Democrats of the Congress  
SOC: Socialist Group of the Congress  
NR: Member not belonging to any political group of the Congress



## I. Introduction

1. Since 1994, the Congress has been pursuing a systematic programme of surveys on the situation of local and, where applicable, regional democracy in member states of the Council of Europe. The system was formalized in Article 2 (3) of the Committee of Ministers' Statutory Resolution (2000) 1 on the Congress of Local and Regional Authorities of Europe (hereafter: Congress), which states that "the Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented".

2. Every survey is conducted by a team led by one or two rapporteurs appointed by the Institutional Committee of the Congress or by the Bureau of the relevant Chamber. Following one or two visits to the country, a draft report is presented to and discussed in, the Institutional Committee of the Congress, usually together with a draft Recommendation to the authorities of the respective country, and sometimes with a draft Resolution addressed to Council of Europe bodies. After approval by the Institutional Committee, the draft Recommendation is discussed and approved by the Congress in Plenary Session or by its Standing Committee (as is, if applicable, the draft Resolution). The survey is conducted and the report and Recommendation (and Resolution) are formulated in accordance with the principles and standards set out in the European Charter of Local Self-Government of 1985 (hereafter: "the Charter").

3. In 2002-2003, the Republic of Portugal was subject to a general Congress survey of both local and regional democracy<sup>2</sup>. On the basis of this report, Recommendation 127 (2003) on local and regional democracy in Portugal was debated and adopted by the Congress on 21 May 2003.

4. On 13 November 2006, the National Association of Municipalities (Municípios) of Portugal (hereafter: ANMP) submitted a complaint to the Congress, claiming that the rights of local authorities enshrined in the Charter were severely infringed by the new Law on Local Finance (Law No. 2/2007). The Institutional Committee of the Congress subsequently decided to carry out a fact-finding visit to Portugal. The Committee was also asked by the Bureau of the Congress<sup>3</sup> to take advantage of its visit to investigate the legitimacy of the presence of representatives of the Portuguese "parishes" (freguesias)<sup>4</sup> in the Portuguese delegation to the Congress.

5. The aim of this report is therefore to assess the compliance of the new Law on Local Finance (Law No. 2/2007) with the European Charter of Local Self-Government. The second purpose of the report is to provide information on the role of parishes (freguesias) with a view to determining the appropriateness of their representation within the Portuguese delegation to the Congress. Some new aspects of the question regarding regionalization in the monitoring report will be touched upon.

6. On 12 April 2007, the Institutional Committee of the CONGRESS appointed Mr. Davor ZMEGAC (Croatia, L, ILDG), who is a member of the Chamber of Local Authorities and Mayor of Kutina (Croatia), as the rapporteur for the fact-finding visit to Portugal. The rapporteur was assisted during the visit and in the preparation of the report by Prof. Eivind SMITH, Vice-Chair of the Group of Independent Experts on the European Charter of Local Self-Government and Professor at the University of Oslo, as Expert, and Ms Almut Schroeder, from the Council of Europe Congress Secretariat.

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<sup>2</sup> CG (10) 5 rev.

<sup>3</sup> Congress Resolution 255 (2008) under 4.d.

<sup>4</sup> See letter of 13/04/2007 from Armando Manuel Diniz Vieira (President of the Governing Council of the ANAFRE) to the Congress, letter of 24/05/2006 from Fernando Ruas (President of the ANMP) to the President of the Congress, and the position paper submitted by ANAFRE to the Bureau of the Congress on 27 April 2007 [CG/BUR(13)114].

7. An official visit to Lisbon was made from 8 to 10 October 2008 by the Council of Europe Congress delegation, comprising the rapporteur, the expert and the representative of the Council of Europe Secretariat. During this visit, the delegation met representatives from the National Association of Municipalities of Portugal (ANMP), the National Association of Parishes of Portugal (ANAFRE), the municipalities of Lisbon and Torres Novas, the Court of Auditors and the Ministry for the Urban Affairs, Planning and Environment (State Secretariat for Local Administration), as well as representatives of the Portuguese Parliament and academics (the complete list of persons met during the visit is given in Appendix 1).

8. Following the visit, the present report was drawn up with the help of the expert and subsequently submitted to the Institutional Committee for discussion and approval at its meeting of 15 May 2009. However, the report could not be approved at this meeting, on the grounds that, firstly the rapporteur could not attend the meeting due to the holding of local elections in his country, and secondly, because the report had been changed only a few days before the meeting and still needed some adjustments.

## **II. Background information: Territorial Organisation and Legal Basis**

9. The overall surface area of the Republic of Portugal is 91,831 sq. km. (including the archipelagos of the Azores and Madeira). The total population is approximately 10 million. Portugal has been a member of the Council of Europe since 1976.

10. According to its Constitution, Portugal is a unitary state, within which the Constitution provides for the establishment of no fewer than four different types of local and regional self-government. Alongside the two “autonomous regions” of the Azores and Madeira (see Articles 225 et seq), the tiers (on the mainland) are parishes (freguesias), municipalities and administrative regions (see Articles 235-262). However, no administrative regions have yet been created, which means that only two tiers of local and regional self-government are in operation on the mainland: municipalities and parishes.

11. At present, there are 308 municipalities and 4,251 parishes in Portugal. Of these, 19 municipalities and 150 parishes are located in the Azores, 11 municipalities and 54 parishes in Madeira.

12. The average population of Portuguese municipalities is among the highest in Europe (some 32,000), with the smallest having around 400 and the biggest some 560,000 residents (Lisbon). The average population of parishes is much smaller, but even here the range between the smallest and the biggest is significant (from under a hundred to some 60,000). The size of the municipalities and the diversity that exists at both levels should be borne in mind to understand the structure of the present system and the way in which it operates.

13. Portugal signed the European Charter of Local Self-Government on 15 October 1985. The Charter was ratified on 18 December 1990 and entered into force on 1 April 1991. No particular declarations or reservations were made by Portugal at the time of ratification. It can therefore be assumed that the European Charter of Local Self-Government applies to the authorities that the Constitution itself refers to as “local authorities” (i.e. municipalities, parishes and administrative regions – once established), and to the “autonomous regions”.

14. According to Article 8 (2) of the Constitution, “Rules provided for in international conventions that have been duly ratified or approved, shall apply in national law, following their official publication, so long as they remain internationally binding with respect to the Portuguese State”. The European Charter of Local Self-Government is effectively an international convention within the meaning of this provision. It is therefore clear that the Charter in its entirety (insofar as is justified by the substance of each provision) may be referred to in Portuguese courts and taken into account when resolving legal disputes between local authorities and central government, or between local authorities and the autonomous regions in which they are located.

15. The main parts of this report will focus on a number of issues relating to local finances (III) and on the representation of the parish level in the Portuguese delegation to the Congress (IV). Finally, the prospect of the future establishment of regional self-government in mainland Portugal will also be briefly addressed (V).

### **III. The compatibility with the European Charter of Local Self-government of recent legislative changes relating to municipal finances**

16. According to Article 3 (1) of the Charter, local authorities must be able to regulate and manage “a substantial share” of public affairs. As the most important players at local level, Portuguese municipalities enjoy general competence to undertake activities affecting the interests of their citizens, in accordance with each municipality’s own decisions. Due to their proximity to the population, some of the municipalities’ activities even exceed the legal requirements.

17. Legal authority to perform certain functions is meaningless if local authorities lack the financial resources to carry them out. Article 9 of the Charter therefore specifies that local authorities have the right to adequate financial resources of their own, as well as the power to dispose of these resources freely. In terms of Portugal’s compliance with the requirements of Article 9 of the Charter in general, the situation seems to have improved greatly over the past 20 years. In Recommendation 127 (2003), however, the Congress recommended, among other things, that:

- “the Portuguese authorities fulfill their political commitment of ensuring that the necessary financial and material resources accompany the powers devolved”, and that
- “consideration be given to further enhancing financial possibilities of municipalities to allow them to better exercise their responsibilities”. This should be borne in mind during consideration of the ANMP’s recent complaints regarding local finances.

18. One way of evaluating Portugal’s compliance with the principle of subsidiarity as enshrined in the Charter is to evaluate the municipal sector’s share of overall public spending. According to the Dexia’s paper on “Sub-national public finance in the European Union. Trends 2000/2005” (November 2006), sub-national public spending in Portugal as proportion of public expenditure in 2005 amounts to 12.9 %, with a growth in 2005 above the EU average. This tallies with the figures provided by the ANMP (reported in the 2002-2003 monitoring report, see footnote 1), according to which spending by the local public sector represented some 10 % of total public spending in 2002. These figures are well beneath the EU average (33.7 % in 2005). On the other hand, they could hardly be classified as exceptionally low when compared to the figures for many other signatories to the Charter.

19. It is argued by ANMP that Portuguese Law no. 2/2007 on Local Finance fails to meet the obligations deriving from the European Charter of Local Self-Government, namely by violating the principle of financial security and stability of municipalities, laid down in Article 9 of the Charter (and thus failing even to respect the very concept of local autonomy, as defined in Article 3 of the Charter) on a number of matters on which comments follow.

20. Articles 4 (1) and Article 5 (3) of the Law state that the annual national budget law may make changes to the system of local finances, relating both to the level of financing, in general, and to the maximum debt ceiling, in particular. This seems to run counter to Article 3 of the Charter and to one of the recommendations made by the Congress in 2003, which suggested that the “status of law on local finance be enhanced so as not to alter budgetary forecasts of the municipalities by the national annual budgets”. This extends to urging Portugal to respect as far as possible municipalities’ need for financial stability and scope for long term planning. This recommendation should most certainly stand.

21. At the same time, however, excluding all possibility of adjustments in the annual budget would be inconsistent with the situation in modern states, where strict constitutional restrictions on such a possibility are rare and might easily conflict with the fundamental needs of the national financial system. In other words, the querying of Portugal's compliance with its obligations under Article 9 of the Charter in this respect relates first of all to the way in which the power to adopt the annual budgetary law might be used in practice for introducing changes to the system of local finance, but not to the existence of that power under the Constitution and the Law on Local Finance. No infringement of the Charter by the legal provision itself therefore exists, but observation of how this power is used in practice is certainly necessary. Central government should guarantee for local authorities a sufficient degree of stability in their financial situation and scope for planning beyond the period covered by each annual budget. Alterations to that regime must not irreparably compromise the normal activity of local authorities.

22. Article 4 (2) of the Law restricts the application of the principle of non-assignment by broadening non-application of this principle, especially in relation to the municipal social fund. At first sight, this provision may be regarded as conflicting with Article 9 (7) of the Charter, which restricts the earmarking of grants to local authorities. But earmarking does not in itself represent a violation of the Charter, and the relevant measures taken in this respect in Portugal seem to be of minor importance. In any case, the Portuguese system seems to be one of those in which the proportion of earmarked transfers is relatively low. By consequence a breach of the Charter can hardly be found in this respect.

23. Article 5 (4) of the law states that municipalities which exceeded the debt ceiling should be penalized by a reduction equivalent to the excess amount in the budgetary transfers due by the State in the following year. However, it seems that the core provision relates to the debt ceiling, which in its turn should be understood as a crucial part of the Portuguese authorities' efforts to shape the financial status of the Republic as a whole, itself part of the Euro zone. In itself, it cannot be deemed contrary to the Charter to limit each municipality's maximum level of cash indebtedness to 125 % of its total revenue (Article 37 of the law). The great majority of Portuguese municipalities have no particular problem in complying with the maximum standards of indebtedness, and an effort by the other municipalities to do the same would very likely have the positive effect of enhancing their potential for long-term sustainable development.

24. The "penalty" for failing to comply with this provision seems entirely objective, without any discernible "penal" character. Moreover, the penalties are paid to the "Municipal Regulation Fund" and should therefore be used for municipal purposes only. However, the rules regulating the use of this fund have not yet been approved, which seems to leave it to the Government's own discretion. Incidentally, therefore, the absence of objective criteria for the redistribution of the fund could be seen as contradicting Article 3 of the Charter.

25. Article 8 of the Law maintains a "technical and financial cooperation regime" which - as ANMP argues - in practice conceals a discretionary concession by various Ministries of subsidies to municipalities, without any form of prior legal or political control.

26. Congress Recommendation 127 (2003) "expresses some concern as to the current frequency of contracts between central government and some municipalities for the co-financing of projects for local development, and expresses some doubt as to the real freedom of municipalities to influence the terms of such contracts and the expediency of these contracts for matters of purely local interests (parking areas, street repair, etc.)". It recommends that "the practice of programme-contracts between the central or regional government and some municipalities on the co-financing of projects for local development be reviewed if they are concluded on matters of genuine local relevance".

27. The programme-contracts scheme, without proper regulation to that effect and without due control by the Parliament, may be seen as a form of dependency by the local authorities on the government. Including these grants in the total amount of the Municipal General Fund, to be transferred annually to municipalities, could be a good way to prevent that dependency, and would be more in line with the rules provided in para.7 of Article 9 of the Charter.

28. It could hardly be argued that contracts between central government and individual municipalities in themselves contravene Portugal's obligations under the Charter. It therefore seems that the crux of this issue as well lies in the proper use of the inherent powers of central government, rather than in the possibility itself of such contracts.

29. Article 10, sub-paragraph a. and 17, sub-paragraph a. of the Law reduced the revenue from municipality's tax on rural property by 50%, with the aim of strengthening financing to the parishes. Strengthening the financial resources of one tier of local authority (rural parishes) cannot in itself be regarded as contrary to the Charter. On the contrary, the Congress has recommended that the Portuguese authorities 'seriously consider increasing the share of parish income allocated by central government (currently 2.5%), to help them improve their performance in many important tasks for the local communities' (Recommendation 127 (2003)). This reduces even more the grounds for regarding this particular way of meeting local demands as to the Charter.

30. However, strengthening the financial resources of one tier of local authority (parishes) at the expense of the financial resources of another tier of local authority (municipalities) must only occur insofar as the financial losses of the latter are compensated by other resources. It remains therefore the state's obligation under Article 9 of the Charter to ensure appropriate financing of the municipalities concerned. Unless this obligation is met, their capacity to fulfil their important tasks in conformity with the Charter would vanish.

31. Article 12 (7) of the law still allows the government to grant exemptions from taxes to the extent allowed by "international legal obligations binding on the Portuguese state", and there do not seem to be many of them, which constitute municipal revenues, with no automatic compensation for the municipalities affected. Congress Recommendation 127 (2003) demands that "any local tax and fee exemptions that may occur be based on common agreement between the national government and the representatives of the municipalities (if not it may affect buoyancy of local finances)". It remains important to stress that such exemptions must never reach a level likely to hamper the municipality's ability to fulfil its tasks in the service of the local community.

32. Where subjective exemptions to municipal taxes are concerned (Article 12, (6)), the relevant municipality should be consulted before a decision is taken, should be given grounds for the decision and should have the right of compensation if it "expressly disagrees" with the decision. If well managed, this system could be one in which tax exemptions are made with mutual agreement. Subjective exemptions are usually granted in cases where the establishment of major industrial plants in Portugal is under negotiation, financially affecting one (or more) of the municipalities, which in turn is (or are) likely to benefit from the decision. No breach of Article 12 of the Charter can be established.

33. Article 13 (5) of the law extends by two weeks the deadline for transferring the revenues from tax collected by Government departments to the municipalities. Although this cannot be deemed contrary to the Charter, it may have an adverse effect on municipalities that receive their fiscal revenue later than they need it. Government retains these revenues for longer periods, gaining financial benefit at the expense of the municipalities.

34. Article 34 of the law provides for an increase from 15% to 20% in the deductions made from transfers by the State in respect of the repayment of debts owed by the municipalities. This provision as well must be viewed in the light of Portugal's efforts to keep its overall financial situation under control, and it is difficult to regard an increase in the maximum authorised from 15 to 20 % as a problem in itself. Moreover, the system may be applied only in situations where the relevant debts have been acknowledged in a final court judgement, or are not contested by the authorities, and such deductions are not automatic ("may", "up to a maximum of 20% of the overall amount"). In other words, it seems as if this power is designed to provide a remedy in cases of imminent crisis for the relevant municipality. It is up to the Courts to resolve disputes between local authorities and their creditors, for any creditor can take action against a debtor on the basis of a statement acknowledging the debt. No information was provided during the visit about extensive and/or excessive use of that power.

35. Article 38 (12) of the law prohibits the signing by municipalities of contracts with financial bodies for the consolidation of short-term debt, as well as the transfer of loans that have not yet matured, even if such contracts have no impact on municipalities' level of debt. The provision must be viewed in the light of Portugal's struggle to improve the situation of its public finances. Moreover, it is the responsibility of the independent Court of Auditors to ensure that municipalities comply with legal requirements regarding balanced budgets, limits to indebtedness, etc, a duty incumbent on the court under the local finance legislation, and extending only to the question of lawfulness (see Articles 5 and 46 of Law No. 98/97 on the Court of Auditors). The overall impression is therefore that the system as such is well within the limits laid down by the Charter.

36. On the other hand, the prohibition relates to a common mechanism of financial management by way of consolidating existing debts in a way that does not necessarily affect the stability of public finances. In practice, Article 38 (12) of the law seems to have caused practical problems for some of the heavily indebted municipalities, including Lisbon. To the extent that consolidating debts does not increase their amount, only their quality, the interdiction appears to be more rigid than required by the legitimate concerns regarding public finances and should therefore be reconsidered.

37. Article 62 of the law makes it possible for the national budget law to set annual limits for expenditure on staff, including expenditure relating to contracts for freelance work, specific duties and the obtaining of services. Even this provision must of course be viewed in the context of the recent crisis in Portuguese public finances. Nevertheless, it is difficult to accept in the light of the municipalities' right under Article 6 of the Charter to manage their own administrative structure and resources. The delegation was assured that the power conferred by this provision was no longer used and would be abandoned. However, the delegation regards it as important that the Congress checks, in the context of its regular monitoring, that this information is still valid.

38. In conclusion, the Congress delegation's overall impression of the Portuguese system of local finances remains more or less the same as reflected in Recommendation 127 (2003) of the Congress, noting inter alia "that the situation regarding local finances has generally improved since 1993", while recommending, however, that "consideration be given to further enhancing financial possibilities of municipalities to allow them to better exercise their responsibilities".

39. Nevertheless, the Portuguese system of territorial self-government gives rise to some problems relating to the standards and principles laid down in the Charter. Despite concern over the ability of public finances, current local finance legislation restricts management capacity and the financial sustainability of local authorities in several areas. It is worth noting that local and/or regional authorities have a right to financial well-being equivalent to that of central government.

40. Annual budgets should not be used in a way that reduces the financial stability of local authorities, unless this is required by the overriding needs of the national financial system, and central government might be well advised to pay even greater attention to the importance of conducting consultations with the ANMP and other central players in a way that increases mutual understanding and respect for positions that sometimes differ.

#### **IV. The presence of parish (Freguesias) representatives in the portuguese delegation to the Congress**

41. The Portuguese delegation to the Congress is composed of seven representatives and the same number of substitutes. At present, one member and one substitute are appointed after being put forward by the National Association of Parishes of Portugal (hereafter ANAFRE), a change that has caused some concern specifically within the ANMP.

42. In Resolution 255 (2008), the Congress instructed its Institutional Committee to examine the merits of appointing representatives of the parish councils ("freguesias") to the Chamber of Local Authorities; in the meantime, the credentials of the members concerned were accepted (subparagraph 4.d).

43. According to Article 236 of the Constitution, parishes are subject to the same "general principles" as the other categories of "local authorities" mentioned by the Constitution, including municipalities (see Part III, Section VIII, Chapters I-III).

44. The constitutional provisions regarding parishes reflect a long-standing tradition of organizing common affairs at the most local level: their result is a model of local self-government that is the only one of its kind in Europe. The institution stems from the church "parishes", as the name indicates, but has meanwhile lost any legal connection with the clergy. The parish as an institution seems to enjoy considerable credibility and affection among the population. In Portugal, it seems clear that the parishes are the local authorities closest to the citizen, reflecting Article 4 (3) of the Charter, according to which "public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen" (this is known as the subsidiarity principle).

45. In accordance with the law, 'parishes' traditional core activities include the official certification of domicile and the licensing of pets, among other duties. In addition, parishes initiate a number of local activities in fields such as culture, the maintenance of streets and parks, some road works and social facilities for children or elderly people. In such fields, they even serve as the main point of contact for the relevant municipalities, and the municipality concerned frequently delegates functions to the parishes under contracts involving joint financing measures.

46. It should be remembered that the existence and activities of parishes are enshrined in the Constitution itself, and further regulated by sub-constitutional law: the intention is that they should fulfill functions at local level that are fully in line with the ideals of the European Charter of Local Self-Government. The fact that they are governed by "an elected assembly with powers of deliberation and a corporate executive body responsible to it" (Article 239 of the Constitution, cf Article 3 (2) of the Charter) merits particular attention.



This situation complies in particular with the criteria for Congress members under Article 2 para.1 and para. 2 of the Charter of the Congress, which requires members to hold a “local... authority mandate resulting from direct elections”. On the other hand, the requirement under Articles 3 and 4 of the European Charter of Local Self-Government for a “substantial share of public affairs” to be managed by local self-government cannot reasonably be applied to bodies which, in most other states, would be sub-divisions of the municipalities concerned.

47. Local authorities’ right to belong to an association for the protection and promotion of their common interests, in accordance with the requirements in article 10 (2) of the Charter, is explicitly recognized by Article 247 of the Constitution, and an active National Association of Parishes operates in Portugal. The National Association of Parishes of Portugal (ANAFRE) represents a significant number of locally elected representatives and a majority of the parishes. It is worth mentioning, in particular, that the majority of the Portuguese population (between 80 and 90%) lives in parishes which are members of the association.

48. According to the Statutory Resolution CM/Res(2007)6 of the Committee of Ministers of the Council of Europe relating to the Congress of Local and Regional Authorities, “The Congress shall be composed of representatives of local or regional authorities, in conformity with Article 2.1 of the Congress Charter. Delegates shall be appointed according to the criteria and procedure established in the Charter, which will be adopted by the Committee of Ministers, each state ensuring in particular an equitable representation of its various types of local and regional authorities” (Article 3 (1)).

49. According to Article 2 (2. b) of the Charter of the Congress of Local and Regional Authorities of the Council of Europe, “The membership of each member state's delegation to the Congress shall be such as to ensure ... equitable representation of the various types of local and regional authorities in the member state”.

50. According to both texts, the composition of national delegations shall be such as to ensure “equitable representation of the various types of local and regional authorities in the member state”. In the absence of further clarification when the Charter was ratified by the relevant Party (i.e. explicit specification of the “category of local authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope”, according to Article 13 of the European Charter of Local Self – Government), the domestic legal system must be taken as the starting point for an evaluation of the legitimacy of parish representatives in the Congress. This is the case even if the particular system concerned to some extent diverges from the common features in the member states of the Council of Europe.

51. As already mentioned, according to the Constitution of Portugal parishes and municipalities are classified as “local authorities”, with parishes on the same footing as municipalities, both categories being subject to the same “general principles”. The fact that the municipality is nevertheless in practice regarded as the main local self-government body within the political system, and is the main such body according to Portuguese sub-constitutional law, is fairly natural, given, on the one hand, the municipalities’ much bigger powers and financial resources, and, on the other hand, the high number of parishes and the small population in the vast majority of them. However, the system of parishes (freguesias) clearly reflects a long-standing tradition of organizing common affairs at a genuinely local level and is very much in line with a significant number of the ideals and principles underpinning the Charter.

52. In Recommendation 127 (2003) on local and regional democracy in Portugal, the Congress recommended that the Portuguese authorities consider how representatives of the parishes could be kept informed and involved in the work of the Congress, especially considering the future responsibilities they might have (Recommendation 127 (2003)).

53. The recent inclusion by the Portuguese authorities of one representative (with one substitute) of the parish level in a national delegation of seven members (and the same number of substitutes) tallies with this recommendation.

54. Insofar as the great majority of the Portuguese delegation represents the stronger tiers of the system of local and regional authorities (i.e. municipalities and autonomous regions), there is no convincing argument demonstrating that this way of meeting Portugal's obligation to ensure an "equitable representation of the various types of local and regional authorities in the member state" in any way represents a violation of the Charter of the Congress.

#### **V. On the establishment of Regional self-government in mainland Portugal**

55. During its visit to Portugal, the delegation also acquired some up-date information about the state of regionalization in Portugal, and will briefly relate this to the previous monitoring exercise of 2003, which also covered the regional aspect.

56. In the Constitution of Portugal, the term "administrative regions" is used with reference to self-governing regions on the Portuguese mainland. According to Article 255, such regions shall be established by law. But before legislation to that effect is adopted, a majority of the electorate taking part in the vote at national level, as well as a majority in each of the regions to be set up, must express its approval in a referendum (Article 256). A referendum on the establishment of eight regions on the Portuguese mainland was held on 8 November 1998, when 64% (of the voters who took part, in a turnout of 49%) voted against the proposal (see Mr. Montalvo's report to the Standing Committee of the Chamber of Regions of the Congress, CPR/CP(5)15).

57. In Recommendation 127 (2003), the Congress highlighted the considerable potential offered by the creation of self-governed regions with a view to the fulfillment of certain economic and sustainable development functions, and expressed the opinion that, in 1998, the vast majority of voters may have voted against the specific practical plan for regionalization proposed, and not necessarily against the idea of regionalization itself. It therefore recommended that the Portuguese authorities support any debate regarding a new referendum on possible regionalization on the mainland.

58. Against this background, it is encouraging to note that several of the representatives of different Portuguese bodies that the Congress delegation had the opportunity to meet informally expressed the view that the subject of the creation of self-governed regions in mainland Portugal was likely to resurface in the near future. This time however, the proposal was likely to be based on a new model, involving a significant reduction in the number of such regions from eight (as proposed in 1998) to between three and five.

59. Should such a development take place – presumably after the 2009 general election – on the basis of genuine regions, with their own historical background and geographical coherency, endowed with strong and clearly defined powers, it might make a valuable contribution to the efforts being made to resolve some outstanding issues, such as the growing disparity between the littoral and the inland areas. The Congress would very much welcome further steps towards the creation of regions in Portugal.

## Appendix

**Programme of the visit to Lisbon  
by a delegation from the Congress of Local and Regional Authorities  
(8-10 October 2008)**

**Congress delegation:**

Rapporteur:

Mr Davor Zmegac, head of the delegation, member of the Chamber of Local Authorities of the Congress, Mayor of Kutina (Croatia)

Consultant:

Prof Eivind Smith (Norway) vice-chair of the Group of Independent Experts on the European Charter of Local Self-Government, Professor of Public Law at the University of Oslo

Congress Secretariat:

Ms Almut Schröder, acting secretary of the Institutional Committee of the Congress

**Persons met during the visit:****National Association of Municipalities (*Municípios*) of Portugal/ANMP**

Dr Fernando Carvalho Ruas, President

Mr Artur Jose Trindade, Secretary General and secretary of the Portuguese delegation to the Congress of Local and Regional Authorities

Mr Fernando Cruz, Deputy Secretary General

Mr Landri Pinto, Administrator

**National Association of Parishes (*Freguesias*) of Portugal/ANAFRE**

Mr Armando Vieira, President and member of the Portuguese delegation to the Congress of Local and Regional Authorities

Members of the Executive Committee

**Municipalities**

Mr Jose Cardoso da Silva, City Councillor, Municipality of Lisbon (*Câmara*)

Mr Antonio Rodrigues, Mayor of the Municipality of Torres Novas

**Court of Auditors**

Mr Guilherme d'Oliveira Martins, President

Mrs Márcia de Conceição Condessa Brito Cardoso Vala, Deputy General Director

Mrs Ana Maria de Sousa Bento, Auditor-co-ordinator for local authorities

Mr António Costa e Silva, Auditor-co-ordinator for internal auditing

**Ministry for Urban Affairs, Planning and Environment****State Secretariat for Local Administration**

Mr Eduardo Cabrita, Secretary of State for Local Authorities

Mrs Ana Rita Chacim, Member of the Secretary of State's private office

Mrs Eugénia Santos, Director General of Local Authorities

**Parliament**

Mr Jorge Neto, Chairman of the Committee for Budgetary and Financial Affairs

**Experts**

Professor Antonio Rebordao Montalvo, Member of the Group of Independent Experts on the European Charter of Local Self-Government

Professor Joao Paulo Barbosa de Melo, President of the Centre for Local Government Training and Research