

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Recommendation 127 (2003)¹ on local and regional democracy in Portugal

The Congress,

1. Recalling:

a. Article 2, paragraph 1, sub-paragraph *b* of the Committee of Ministers' Statutory Resolution (2000) 1 on the CLRAE, which states that the CLRAE "shall submit proposals to the Committee of Ministers in order to promote local and regional democracy";

b. Article 2 (3) of the Committee of Ministers' Statutory Resolution (2000) 1 on the CLRAE, which states that "the Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented";

c. its Resolutions 31 (1996), 58 (1997) and 106 (2000) setting out guiding principles for drawing up such reports;

2. Bearing in mind the explanatory memorandum CG (10) 5 on local and regional democracy in Portugal, prepared by Mrs K. Smith (United Kingdom, Chamber of Local Authorities) and Mr M. Doric (Croatia, Chamber of Regions), with the assistance of Mr E. Smith, Vice-Chair of the Group of Independent Experts on the European Charter of Local Self-Government (hereafter: the Charter), for which he should be thanked, following two official visits to Lisbon (30 and 31 January and 21 March 2003) and an official visit to Funchal (5 and 6 March 2003);

3. Thanking:

a. the National Association of Municipalities of Portugal for their valuable assistance in the preparation of the report on local and regional democracy in Portugal;

b. the Ministry for the City, Spatial Planning and Environment, the Assembly of the Republic, the National Association of Parishes of Portugal, members of the Portuguese delegation to the CLRAE and the regional governments of Madeira and Azores as well as Mr Montalvo, member of the Group of Independent Experts on the Charter, for their help in preparing the report and their valuable comments throughout the visits;

4. Wishing to draw the attention of the Portuguese national authorities to the following observations and recommendations:

a. as regards democratic achievements, the Congress:

i. congratulates Portugal on the achievements accomplished in the field of local and regional autonomy since the instauration of the present democratic system through the Constitution of 1976;

ii. acknowledges substantial progress made by Portugal since 1976 in the functioning of the two autonomous regions of the Azores and Madeira, and that municipalities and parishes all over the country;

b. as regards the fulfilment of the principles laid down in the Charter, the Congress:

i. notes that the current Portuguese system of territorial autonomy of the two autonomous regions and the municipal and parish levels gives rise to a few observations regarding the principles laid down by the Charter;

ii. welcomes the fact that Portugal was of one the first member states to sign the Charter on 15 October 1985, ratifying it on 18 December 1990 (entry into force on 1 April 1991), with no particular declarations and reservations;

iii. welcomes the fact that the Charter may be referred to in Portuguese courts and taken into account when solving legal disputes between local and regional authorities and the state, and between local authorities and the autonomous regions;

c. as regards the constitutional basis for local and regional democracy, the Congress:

i. notes that, according to the constitution, Portugal is a unitary state;

ii. notes that the constitution lays down the basis for local and regional self-government in Portugal (Part III, Sections VII and VIII), providing for the establishment of no less than four different types of local and regional self-government;

iii. welcomes the fact that the constitution provides substantial guarantees for democratic and effective local self-government and regional self-government in the two autonomous regions of Azores and Madeira;

iv. acknowledges and welcomes the current government's commitment to continuing further devolution in the light of the constitution and the Charter;

5. Also wishing to draw the attention of the Portuguese national authorities to the following observations and recommendations as regards parishes, the Congress:

a. welcomes the fact that parishes are governed, according to the constitution, by the same "general principles" (see Part III, Section VII, Chapter I) as the other categories of "local authorities", namely municipalities (in all parts of Portugal) and administrative regions (on the mainland);

b. notes that the constitutional provisions regarding parishes reflect a long-standing tradition of organising common affairs at a very local level;

c. considers that the main requirements of the Charter as regards the parishes are met by Portuguese law and are effectively implemented in practice;

d. welcomes the fact that the recently created National Association of Parishes of Portugal represents a significant number of locally elected representatives;

e. welcomes the fact that parishes enjoy considerable credibility and affection among the population and represent one of the more original contributions of Portugal to the European heritage of local self-government;

f. notes that tasks performed by parishes owing to their close proximity to citizens sometimes go beyond what is legally required of them;

g. recommends that the Portuguese authorities:

i. seriously consider increasing the share of parish income allocated by central government (currently 2.5%) to help them improve their performance of many important tasks for the local communities;

ii. consider how representatives of the parishes can be kept informed and involved in the work of the CLRAE, especially considering the future responsibilities they may have;

6. Also wishing to draw the attention of the Portuguese national authorities to the following observations and recommendations as regards municipalities, the Congress:

a. considers that even if the parishes are the local authorities closest to the citizen, the municipalities are the most important actors at local level and play a local leadership role;

b. welcomes that fact that Portuguese municipalities have general competence to undertake activities affecting the interests of their citizens in accordance with each municipality's own decisions, and that the legislation provides for a number of "functions of municipalities", as laid down in Chapter II of Law No. 159/99 (the list is not exhaustive);

c. notes in this respect that Chapter III of Law No. 159/99 creates an opening for considerably extending the scope of transfer of functions and competences to municipalities;

d. regrets, however, that for political and financial reasons this provision has not yet been entirely implemented, the process of effectively transferring the wide-ranging competences provided for in the relevant chapter having started only in 2002;

e. notes that sometimes tasks performed by municipalities go beyond legal requirements owing to their close proximity to citizens;

f. notes that the situation regarding local finances has generally improved since 1993, when the application of the law on local financing was suspended;

g. notes, however, that the situation has worsened recently due to the ban on access to credit transactions and hopes

that once the financial circumstances of the country have improved these restrictions will be lifted;

h. 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.);

i. notes the originality of the institutional arrangements at municipal level provided for by the constitution, where the representative organs of municipalities are the municipal assembly and the municipal chamber (both are "representative" in the sense of being elected by the electorate, and both are collective);

j. acknowledges that this institutional framework recognises the importance of parishes for the work of Portuguese municipalities, and might even provide an excellent opportunity to co-ordinate the action of parishes and municipalities as demonstrated by the Protocol signed in December 2002 between the National Association of Municipalities and the National Association of Parishes of Portugal;

k. also notes that according to Article 239 of the Portuguese Constitution, there shall be "a corporate executive body responsible to" the elected assembly with powers of deliberation, and considers that the wording of the constitution does therefore not present a problem;

l. acknowledges, however, that regarding the construction and operation of the Portuguese system, some doubt may be expressed as to how far the "responsibility" criterion is effectively met by the system as a whole;

m. acknowledges at the same time that the assembly has important general supervisory functions and a policy defining role (budget, local taxes, loans, urban plans, etc.) and that no important actions or decisions can be taken without its formal approval (on a number of items presented by the chamber the assembly enjoys the possibility of adopting proposals in a modified form or of course rejecting them);

n. notes that the assembly cannot formally overthrow the executive, as the two organs are directly elected, but can block its activities by not approving its proposals;

o. notes at the same time that this original system has been operating in Portugal since 1976 without any major problem or changes, although some talks on introducing changes have taken place;

p. recommends that the Portuguese authorities:

i. continue the discussion on the just and fair distribution of functions and competences between the central state and the local level(s) within the framework set out by Law No. 159/99 and with respect to the principles of the Charter;

ii. fulfil their political commitment of ensuring that the necessary financial and material resources accompany the powers devolved;

iii. consider together with representatives of local authorities how to achieve a more balanced relationship between the assembly and the executive body within the municipality and consider giving further thought as to how the institutional system could be improved in the light of Article 3, paragraph 2 of the Charter making the executive body even more accountable and responsible before the assembly;

q. also recommends that:

i. status of law on local finance be enhanced so as not to alter budgetary forecasts of the municipalities by the national annual budgets;

ii. 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);

iii. the strict limits on the autonomy to determine the rate of local taxes be subject to further discussion in due time in the light of Article 9 (3) of the Charter;

iv. 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;

v. consideration be given to further enhancing financial possibilities of municipalities to allow them to better exercise their responsibilities;

7. Also wishing to draw the attention of the Portuguese national authorities to the following observations and recommendations as regards autonomous regions, the Congress:

a. notes that the autonomous regions have been in existence since the first years of the present constitutional period of Portugal and their autonomy seems to have been well developed;

b. welcomes the fact that over the past thirty years since the instauration of the present democratic regime in Portugal, the two regions have undergone a remarkable development that no doubt is due, to a large extent, to the way the two systems of regional government have been able to function in the interest of their respective populations;

c. notes that the basic guarantees of autonomy provided by the constitution seem to be well respected in global terms – as regards the scope of devolution of competences to the two regional assemblies, their financial ability to carry out their tasks and to initiate projects of their own choosing, the strict observation of the legality principle in different forms of supervision and their access to justice to defend their prerogatives under the constitution and Portuguese law;

d. considers at the same time that more clarity is needed regarding the delimitation of competences between the

autonomous regions and the Assembly of the Republic, the main point being the relative vagueness of two criteria used by the constitution to delimit the powers of the regional assemblies (“Principles of the general laws of the Republic” and “matters of specific interest to the regions”, i.e. Article 227.a) read in conjunction with Article 112, paragraph 5 of the constitution);

e. recommends to the Portuguese authorities that:

i. every effort should be made to obtain an even clearer delimitation of the boundaries of regional autonomy in the spirit of the Charter;

ii. in resolving institutional conflicts the specific situation of the autonomous regions be duly taken into account;

iii. a better definition of matters of specific interests to the autonomous regions should be based on the subsidiarity principle enshrined in the Charter and Portuguese law, which should guide any decision by national authorities;

f. recommends to the Portuguese authorities and the European Union that the autonomous regions of Azores and Madeira, as outermost regions of the European Union, must be able to continue to benefit from necessary EU structural funds as well as from other forms of aid and derogations provided for by Article 299; paragraph 2 of the Amsterdam Treaty;

8. Also wishing to draw the attention of the Portuguese national authorities to the following observations and recommendations as regards prospects for possible regionalisation, the Congress:

a. believes that in general, and given the successful experience of many European countries, that democratically elected regional authorities have a considerable potential to fulfil certain economic and sustainable development functions which are an essential part of subsidiarity;

b. takes note of the outcome of the referendum on the establishment of eight regions on the Portuguese mainland held on 8 November 1998 (64% of the 49% of the electorate that took part voted against the proposal) and that no regions have so far been set up on the mainland although the constitution provides for the establishment of administrative regions;

c. considers that in 1998 the vast majority of voters disagreed with the scheme proposed and therefore voted against a concrete scheme of regionalisation as proposed;

d. acknowledges that since 1998 there has been little or no political move in favour of raising the question a second time (perhaps it could be raised after some remodelling of the regional pattern proposed in 1998);

e. stresses that regionalisation might be an appropriate way of solving some of the outstanding issues in Portugal such as the growing gap between the coast and inland areas;

f. considers that it might be legitimate to see in future whether genuine regions with historic background and geographic coherence (which may bring about solidarity

and territorial and social cohesion), having strong and well-defined powers, can answer some of the outstanding questions;

g. thinks that a regional pattern based on the above-mentioned criteria would be more apt to form self-governed entities corresponding to the traditional identities and aspirations of the relevant populations and that regions, in this context, may be well suited to also serving the population living outside the urbanised parts of the country that already are among the most economically well-developed;

h. thinks, however, that the “supra-municipalities” actually created or under political consideration (for example metropolitan areas) should not substitute future regions which would be based on traditional identities and territorial cohesion schemes;

i. considers that a revised pattern of coast-to-border “administrative regions” might even serve the parts of the country that have so far seen less vivid development and that such schemes would seem more likely to attract a positive attitude among the electorate;

j. strongly supports any public debate regarding possible regionalisation on the mainland, which might be put on the country’s political agenda;

k. recommends that the Portuguese authorities:

i. support any public debate regarding possible regionalisation on the mainland, if such a debate is to take place;

ii. consider that regions with a historic background based on traditional identities and territorial cohesion arrangements be the starting point of any further development regarding possible regionalisation;

iii. continue in the years to come a political dialogue with the Congress on ways and prospects of possible regionalisation;

9. Invites the Committee of Ministers of the Council of Europe to transmit this recommendation to the Portuguese national authorities and to the European Union institutions.

1. Debated and adopted by the Congress on 21 May 2003, 2nd Sitting (see Document CG (10) 5, draft recommendation presented by Mrs K. Smith and Mr M. Doric, rapporteurs).