

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Resolution 189 (2004)¹ on “Towards the introduction of a system of European legal safeguards for local and regional self-government”

The Congress,

1. Further to the joint meeting of its Institutional Committee and the Commission for Constitutional Affairs and European Governance of the European Union’s Committee of the Regions in Prague, Czech Republic, on 21 September 2004,

2. Having regard to:

a. its Resolution 97 (2000) on monitoring of the implementation of the European Charter of Local Self-Government, which referred for the first time to the introduction of a European system of legal safeguards for the key principles of local and regional self-government in Europe;

b. its Resolution 106 (2000) reaffirming its determination to monitor the situation of local and regional democracy in member states and the implementation of the European Charter of Local Self-Government through the preparation of specific reports and the adoption of recommendations and resolutions addressed to the central, local and regional authorities concerned;

c. its Recommendation 156 (2004) inviting the Committee of Ministers of the Council of Europe to rapidly adopt the draft Council of Europe convention on regional self-government on the basis of the text prepared by the Steering Committee on Local and Regional Democracy (CDLR) in light of the guiding principles adopted at the 13th Conference of European Ministers responsible for Local and Regional Government (Helsinki, 25 and 26 June 2002);

3. Having examined the report behind this resolution, prepared by Hans Ulrich Stöckling (Switzerland, R, ILDG), Chair of the Institutional Committee of the Congress, in his capacity as rapporteur, in conjunction with Jan Mans (Netherlands, L, SOC) and Carlo Andreotti (Italy, R, EPP/CD), Vice-Chairs of the Committee and co-rapporteurs, at the joint meeting referred to in paragraph 1 above;

4. Expressing its satisfaction that the European system of legal safeguards for key principles of local and regional self-government in respect of the European Union has improved remarkably recently;

5. Noting that these safeguards currently comprise:

a. in respect of the Council of Europe: the provisions of the European Charter of Local Self-Government,² an international treaty setting out the fundamental rights of local authorities in their respective countries;

b. in respect of the European Union: the provisions of the Treaty establishing a Constitution for Europe³ that enshrine local and regional self-government as constitutional principles of the EU and, for the first time, acknowledge that the principle of subsidiarity should be taken into account below state level;

6. Highlighting the importance of the responsibilities entrusted to the Congress and the Committee of the Regions in defending and promoting subsidiarity and local and regional self-government within the Council of Europe and the European Union respectively, on the basis of the above-mentioned provisions of international law;

7. Noting that these responsibilities are complementary, with the result that the Congress and the Committee of the Regions are now in a position to monitor, albeit only partially as yet, compliance with the key principles of subsidiarity and local and regional self-government by, respectively, the central authorities of the forty-six Council of Europe member states and the institutions of the European Union;

8. Recalling, firstly, that its own monitoring responsibilities in this field:

a. concern relations between central authorities and local and regional authorities in the Council of Europe member states;

b. derive from Statutory Resolution (2000) 1 of the Committee of Ministers, which states that the Congress shall ensure that the principles of the European Charter of Local Self-Government are implemented in Council of Europe member states;⁴

c. are, under Rule 37.1 of its Rules of Procedure, exercised by its Institutional Committee with the assistance of the Group of Independent Experts on the European Charter of Local Self-Government, which is attached to it;⁵

9. Considering that, as far as regional self-government is concerned, it is unacceptable that, where they exist, European regions should not, as local authorities do, enjoy Europe-wide specific legal safeguards for their fundamental rights;

10. Recalling, secondly, that the responsibilities of the Committee of the Regions in this field:

a. concern, in particular, relations between the European Union institutions with legislative power and the local and regional authorities of the twenty-five European Union member states;

b. are based on the provisions of the treaty mentioned in paragraph 5.*b* above, with reference in particular to:

i. the drafting and proposal of European Union legislation in the fields in which the Committee of the Regions must be consulted so that it can help assess the implications of legislation in terms of regulations to be introduced at local and regional level and any financial impact it may have;

ii. the right of the Committee of the Regions to apply to the Court of Justice in the event of a breach of the principle of subsidiarity;⁶

11. Noting that, although the Treaty establishing a Constitution for Europe has not empowered the Committee of the Regions to intervene in the early-warning system when EU legislation is being drafted, the system does have implications for the Committee of the Regions, insofar as it will have a direct impact on the decision-making process and relations between the institutions and hence on the progress of consultations involving the Committee of the Regions;

12. In light of the above-mentioned, wishes to make the following points:

a. further to the adoption of the Treaty establishing a Constitution for Europe, the European system of legal safeguards for the key principles of local and regional self-government, although it has been strengthened, is still incomplete;

b. the system will not be complete until the treaty referred to in the preceding paragraph comes into force and the new Council of Europe Convention on Regional Self-Government is, like the European Charter of Local Self-Government, finally accepted by all Council of Europe member states;

c. considering the time needed to achieve this objective and the urgency of the problems connected with local and regional self-government throughout Europe, it is desirable to enhance this system of safeguards as of now, despite the fact that it is still incomplete or provisional in certain respects;

d. to this end, it is desirable to incorporate the existing provisions on local and regional self-government and the principles of subsidiarity and proportionality set out, respectively, in the European Charter of Local Self-Government, the Treaty establishing a Constitution for Europe and the draft convention on regional self-government⁷ in a single joint political document of the Congress/Committee of the Regions;

e. this document, setting out all the provisions in a simple, organised and coherent fashion, in the form of a “European code of subsidiarity and local and regional self-government”, should help European local and regional elected representatives and the associations representing them to understand, master and make good use of European legal rules that are in force or have been adopted or proposed in order to safeguard their fundamental rights;

f. this document could be prepared in the form of a synoptic table and contain proposals with a view to highlighting the principles contained in the European Charter of Local Self-Government and adapting the provisions of the draft

convention on regional self-government referred to in paragraph 12.d above, so that these documents may both one day be applicable, in complementary fashion, in accordance with the needs expressed by the states;

g. it is important that the Congress should be involved, as an observer, in the work of the Committee of the Regions on monitoring compliance with the principles of subsidiarity and local and regional self-government by the institutions of the European Union and, conversely, that the Committee of the Regions should be involved, in the same capacity, in the Congress’s work on monitoring the implementation of the principles of the European Charter of Local Self-Government in Council of Europe member states;

h. accordingly, the Congress’ competent authorities should give careful consideration to the proposal put forward within the Committee of the Regions⁸ concerning the possibility that the Group of Independent Experts on the European Charter of Local Self-Government, referred to in paragraph 8.c above, might contribute to the above-mentioned work of the Committee of the Regions;

i. taking into account Committee of Ministers Resolution (2000) 1, the consideration of the above-mentioned proposal should be done in the framework of a more general debate concerning the reinforcement of the status of the Group of Independent Experts on the European Charter of Local Self-Government within the Council of Europe;

13. In the light of the considerations in paragraph 12 above, instructs the Institutional Committee:

a. to prepare a preliminary draft “European code of subsidiarity and local and regional self-government” with the assistance of the Group of Independent Experts on the European Charter of Local Self-Government, keeping the Commission for Constitutional Affairs and European Governance of the Committee of the Regions informed of its work;

b. to address this preliminary draft to the Bureau of the Congress so that the Committee of the Regions may be duly consulted, through the Congress/Committee of the Regions Contact Group if appropriate, on further work on the subject with a view to a final decision;

c. to follow closely the work of the Committee of the Regions on monitoring compliance with the principle of subsidiarity by the institutions of the European Union and regularly to invite a representative of the competent body of the Committee of the Regions to its meetings on compliance with the principle of local and regional self-government in Council of Europe member states;

d. to address proposals to the Bureau of the Congress, with a view to a final decision, concerning:

i. the reinforcement of the status of the Group of Independent Experts on the European Charter of Local Self-Government within the Council of Europe;

ii. the group's contribution to the above-mentioned work of the Committee of the Regions; in this respect, the proposals should also refer to the consultation procedure of the Committee of the Regions, possibly through the Congress/Committee of the Regions Contact Group;

14. To this end, considers that, if appropriate, matters relating to:

a. the preparation of a "European code of subsidiarity and local and regional self-government" based on the European system of legal safeguards for the key principles of local and regional self-government in Europe;

b. the participation of Congress representatives in the work of the Committee of the Regions on monitoring compliance with the principle of subsidiarity by the institutions of the European Union, and the participation of Committee of the Regions' representatives in the Congress's work on compliance with the principle of local and regional self-government in the Council of Europe member states;

c. the contribution of the Group of Independent Experts on the European Charter of Local Self-Government to the above-mentioned work of the Committee of the Regions;

could, in due course, be part of a general agreement between the Congress and the Committee of the Regions in the framework of the relations between the Council of Europe and the European Union;

15. In the light of the foregoing, instructs its President to address this resolution to the President of the Committee

of the Regions and, for information, to the Chair of the Committee of Ministers and the President of the Parliamentary Assembly of the Council of Europe.

1. Debated and adopted by the Standing Committee of the Congress on 4 November 2004 (see Document CG (11) 26, draft resolution presented by H.-U. Stöckling (Switzerland, R, ILDG), J. Mans (Netherlands, L, SOC) and C. Andreotti (Italy, R, EPP/CD), rapporteurs).
2. The Committee of Ministers of the Council of Europe adopted this Treaty on 15 October 1985; it came into force on 1 September 1988. To date it has been ratified by thirty-nine Council of Europe member states, including twenty-four members of the European Union (France, which for the time being has only signed the Charter, recently set in motion the procedure for its ratification).
3. Adopted by the European Council in Brussels on 17 and 18 June 2004.
4. Article 2, paragraph 3, of Resolution (2000) 1.
5. The Statutes of the Group of Independent Experts on the European Charter of Local Self-Government were approved by the Institutional Committee of the Congress on 27 April 2001 – Document CG/INST (7) 33 rev2.
6. Article 7 of the Protocol on the application of the principles of subsidiarity and proportionality of the Treaty establishing a Constitution for Europe and Article III-270 of the treaty.
7. As prepared by the CDLR, in the light of any observations on the text from the 14th Conference of European Ministers responsible for Local and Regional Government (Budapest, Hungary, 24 and 25 February 2005).
8. The proposal was put forward at the "First Conference on Subsidiarity" held by the Commission for Constitutional Affairs and European Governance of the Committee of the Regions in Berlin on 27 May 2004.