

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 179 (2005)¹ on local democracy in Moldova

The Congress, bearing in mind the proposal from the Chamber of Local Authorities,

1. Having regard to:

a. Article 2, paragraph 3, of Statutory Resolution (2000) 1 of the Congress, providing 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”;

b. its Resolutions 31 (1996), 58 (1997) and 106 (2000) setting out the guiding principles for the formulation of the aforementioned reports;

2. Recalling:

a. its Recommendations 38 (1998), 84 (2000) and 110 (2002) on the situation of local and/or regional democracy in the Republic of Moldova, in which it set out a number of considerations for the attention of the Moldovan authorities;

b. its Resolutions 59 (1998), 103 (2000) and 132 (2002) on the situation of local and/or regional democracy in the Republic of Moldova, in which it decided to continue to monitor developments in local and regional democracy in this country;

3. Bearing in mind:

a. the explanatory memorandum on local democracy in Moldova prepared by Pascal Mangin (France, L, EPP/CD), Rapporteur for the Institutional Committee of the Chamber of Local Authorities following his official visits to Moldova (Chişinău, Comrat, Tiraspol and Bendery) on 17 and 18 January 2005, 11 and 12 July 2005 and on 25 and 26 July 2005, assisted by Mr Vadym Proshko (Ukraine) and Professor John Loughlin (Ireland), members of the Group of Independent Experts on the European Charter of Local Self-Government, to whom we would like to express our gratitude;

b. the report on the observer mission for the local elections in Moldova on 25 May and 8 June 2003, as adopted by the Bureau of the Congress on 4 July 2003,² and the information report on the latest developments in local democracy in Moldova as approved by the Bureau of the Congress on 22 March 2004 (rapporteur: Pascal Mangin, France)³ and the report on the observer

mission for the local by-elections in Moldova on 10 and 24 July 2005, as adopted by the Bureau of the Congress on 19 September 2005;⁴

4. Thanking:

a. the Moldovan parliamentary and governmental authorities, the associations of local authorities, the Gagauz regional authorities and the experts of the Institute for Development and Social Initiatives (IDIS) “Viitorul” for the information and documentation provided and the comments supplied during their meetings with the rapporteur;

b. Mr Vladimir Philipov, Special Representative of the Secretary General of the Council of Europe in Moldova, for his valuable help in preparing the report;

c. the international organisations represented in Moldova and in particular Mr William Hill, Head of the OSCE Mission to Moldova, and his colleagues, for the help they gave the Congress on a political level at the meetings with the delegation;

5. Would draw the attention of the Moldovan authorities, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to the comments and recommendations set out below;

6. In connection with the general development of local democracy in Moldova since 2002 and the implementation of the European Charter of Local Self-Government (hereinafter “the Charter”):

a. points out that in March 2003 the Republic of Moldova amended its legislation on local self-government by adopting a new Law on Local Public Administration;⁵

b. notes the introduction of subsequent changes to national legislation on local self-government, including the adoption at the end of 2003 of the Law on the Status of Local Elected Representatives⁶ and the Law on Local Public Finance,⁷ and regrets that the final versions of these laws were not communicated, as agreed, to the Council of Europe for opinion before their adoption;

c. wishes these legislative changes to be put into practice by means of a type of local self-government more in keeping with the spirit of the Charter;

d. considers that current legislation must be implemented in such a way as to reduce the discrepancy between the legislative provisions and their implementation, and this implementation may take place only if an effective and autonomous local public administration exists;

e. draws attention to the outcome of the Conference on “Decentralisation in Moldova: recent developments and future trends” held in Chişinău on 8 and 9 July 2003, which led to the adoption of an action plan on the necessary reforms in the field of decentralisation, geared to improving the legislative framework of local self-government, as well as to the conclusions of a round table on implementing the results of the conference held in Chişinău from 21 to 23 October 2003;

f. notes numerous cases of interference by the central authorities in local authority affairs affecting and delaying the development of local democracy in Moldova, and which point to a lack of efficient decentralisation in the country;

g. notes that the Moldovan President has declared 2005 “Local Self-Government Year” and expresses the hope that a significant assessment of concrete and positive effects produced by this initiative, benefiting local authorities, will be made;

h. welcomes the setting up in the Moldovan Parliament of an ad hoc working group responsible for proposing amendments to legislation on the decentralisation of powers and the local public administration;

i. recommends that the Moldovan authorities:

i. make the necessary arrangements to guarantee the practical implementation of the new legislation in the field of local public administration, and ensure that these texts are applied in the spirit of the European Charter of Local Self-Government;

ii. ensure the effective implementation of the priority measures set out in the action plan on decentralisation reform, drawing on the legislative consultancy work carried out by the Directorate of Legal Affairs of the Secretariat General of the Council of Europe and keeping to the timetable adopted;

iii. ensure that the major objective set by the Moldovan central authorities of guaranteeing the country’s stable economic development by means of a strong centralised administration is not achieved to the detriment of genuine decentralisation and local self-government, which is also an important factor of economic development at local level;

iv. take the requisite steps to remove the institutional and procedural obstacles to holding local referendums to dismiss mayors, thus complying with the rights of citizens of local communities as provided for in Moldovan national legislation;

7. In connection with the distribution of responsibilities between the central and local authorities and administrative autonomy of local authorities (Article 4 of the Charter):

a. considers that the absence of any clear distribution of responsibilities between the central and local authorities is preventing completion of the decentralisation process, and that the overlap of specific powers between the two levels of local public administration is having a negative effect on the standard of public service provision;

b. recalls in this connection that the local authorities must have, as far as possible, full and exclusive responsibilities (Article 4.4 of the Charter) distributed between the state and the local self-governing bodies, based on respect for the subsidiarity principle (Article 4.3 of the Charter);

c. stresses that supervision of the implementation of responsibilities delegated to local authorities by the central

administration must not develop into supervision of the local authorities by the central government;

d. regrets that the local authorities have a very limited freedom of organising themselves, in particular because of the obligation of recruiting a given number of civil servants to be affected to precise tasks;

e. recommends that the Moldovan authorities:

i. define in detail the responsibilities of first- and second-level local authorities by means of appropriate legislation, in order to prevent such responsibilities from overlapping with each other or with the responsibilities of the central state;

ii. draw a clear distinction between the rules governing state civil servants and those on local authority employees, stipulating that the latter are answerable to their local authorities rather than to the central state;

8. In connection with the financial autonomy of local authorities (Article 9 of the Charter):

a. is convinced that financial autonomy on the part of local authorities is a vital component of local self-government;

b. stresses that genuine decentralisation including a large financial autonomy is the only means of guaranteeing the autonomy of action of local authorities from the central authorities by prompting local authorities to attach the utmost importance to matters of local economic development;

c. regrets:

i. the very limited extent of local financial autonomy in Moldova and the almost total lack of freedom on the part of local authorities to decide on financial matters;

ii. the fact that in practice, decisions on budgetary resource management by local authorities are subject to approval by the central authorities or the districts (*rayons*);

iii. that the local authorities’ resources derive mainly from transfers from the central state and the districts, which makes them extremely dependent on the state and its constituents;

iv. the highly stringent supervision of local financial management by the districts, which transmit state subsidies to the local authorities;

v. that the criteria used by the Ministry of Finance for deciding the amounts of transfers are not transparent enough;

vi. the virtual non-existence of real local taxes, which have been replaced by fees that merely correspond to the cost of specific services;

vii. the lack of an effective mechanism for collecting local taxes, which restricts the rights and capacities of local authorities;

d. recommends that the Moldovan authorities:

- i.* reinforce the financial autonomy of local authorities by increasing the share of local authorities' own revenue in order to ensure that local taxes and levies are sufficient to finance the majority of the local authorities' responsibilities, with state subsidies being used solely for protecting the financially weaker local communities;
- ii.* as a first step, revise the current system for calculating and distributing the amounts of financial transfers from central authorities to local authorities and guarantee that local budget revenues have a long term predictable character;
- iii.* amend the general definition of local budgets making them the independent budgets of local authorities at both levels, so that the latter henceforth have adequate specific revenue, collect their own taxes and are empowered to amend their budgets, within the limits of the law;
- iv.* to establish a reliable, standardised and operational mechanism for state financing of delegated responsibilities by means of earmarked subsidies or grants;

9. In connection with prosecutions and pressure exerted by the central authorities against local elected representatives and officials (Articles 7 and 8 of the Charter), particularly during the pre-election period and in the wake of the general elections held on 6 March 2005:

- a.* takes note of the numerous appeals and declarations concerning the prosecution of the former General Mayor of Chişinău, Chişinău municipal staff and other local elected representatives from the opposition parties, for alleged irregularities and corruption in the exercise of their political and administrative functions;
- b.* acknowledges the importance of combating corruption within the civil service, in compliance with the principles of impartiality and legality, recognised in particular by the European Convention on Human Rights;
- c.* lacking jurisdiction to pronounce on the substance of these allegations and the regularity of the procedures used, regrets that:
 - i.* these prosecutions are taking place in a climate of extreme political tension, and the proceedings that have been initiated often paralyse the functioning of the local authorities concerned, taking into account also a very long time of preliminary investigation in these cases, the unreasonable length of proceedings and prolonged lack of judgment;
 - ii.* as many sources report, this type of measure is implemented in the great majority of cases against local elected representatives from the opposition parties, rather than those belonging to the governing party;
 - iii.* the measures taken against mayors belonging to opposition parties and their local staff often seem disproportionate to the charges against them, and the lack of a final judgment in reasonable time in these cases can

serve to exert pressure on local elected representatives belonging to opposition parties;

iv. some mayors belonging to opposition parties are being pressured, suspended or even forced to resign;

v. Moldovan legislation provides for such measures as suspending the mayor, but it does not specify the conditions for such suspension or mention the suspended mayor's salary, which means that such a mayor cannot engage in another gainful occupation and may remain without any source of income for a considerable length of time, in view of the protracted timeframe of the judicial proceedings;

vi. the body responsible for investigating this type of case (the Centre for Combating Economic Crime and Corruption) is answerable to the government rather than to an independent judicial authority or power;

d. invites the Moldovan authorities to take account of these considerations and adopt all the requisite measures in order to prevent these prosecutions from being used for political ends, to expedite the investigations conducted in such cases and to make them more transparent;

10. In connection with the dismissal of the Mayor of Comrat by the Gagauz People's Assembly in March 2004:

a. recalls the joint letters addressed by the Council of Europe, its Congress and the OSCE to the competent Moldovan authorities voicing their concern about the lawfulness of the dismissal of the Mayor of Comrat, Mr Constantin Tausanji, and the regularity of the procedure followed for this dismissal;

b. notes that the legislation implemented in Gagauzia is different from that applied in the rest of the country and is surprised that this legislation could partly contradict the Moldovan Constitution;

c. notes the arbitrary implementation in Gagauzia of contradictory provisions on the legal status of local elected representatives, and in particular the procedure for dismissing them;

d. consequently, considers that the dismissal of a mayor by decision of the Gagauz People's Assembly and the decree by the Bashkan (Governor) of Gagauzia confirming this decision, are in apparent breach of Articles 7.1, 8.1 and 8.3 of the European Charter of Local Self-Government, which Moldova has ratified, in that:

- i.* the provisions of the statute ("Ulozhenie") of the Autonomous Region of Gagauzia, which authorise the aforementioned procedure without requiring specification of the reasons for dismissal, are incompatible with the constitutional and legislative provisions of the Republic of Moldova (the Law on Local Public Administration and the Electoral Code), which lay down a procedure for dismissing mayors by means of a local referendum held at the instigation of the municipal council or the citizens concerned;

ii. in the case in question, the dismissal would appear to constitute a disproportionate measure;

e. stresses the importance of establishing the coherency of the legal system of the Republic of Moldova throughout the national territory and of ensuring a uniform interpretation of Moldovan legislation, in order to exclude the possibility of the Gagauz authorities arbitrarily choosing which legislative provisions to apply;

f. recommends that the Gagauz authorities revise the relevant provisions of the statute of Gagauzia in order to bring them into line with the constitution and legislation of the Republic of Moldova, and in particular with the principles of local self-government as enshrined in the Charter;

11. In connection with the Law on the Status of the Capital:

a. takes note with satisfaction of the withdrawal of the former draft law on the status of the city of Chişinău and on the Association of Local Authorities from the parliamentary agenda as a result of the criticisms and reservations expressed by the Council of Europe experts;

b. notes that a new draft law on the status of the city of Chişinău approved by the Moldovan Government is now being discussed within the parliament;

c. regrets that this new draft law has not been submitted to the Council of Europe for opinion despite the request of the Congress;

d. recommends that the Moldovan authorities communicate all draft legislation concerning local self-government affairs to the Council of Europe for opinion, and especially the draft law on the status of the city of Chişinău; draft laws should be communicated on a regular basis, within a reasonable time before their adoption by the national parliament;

12. In connection with governmental structures responsible for local authorities:

a. notes the creation of a governmental Agency for Regional Development responsible for Moldovan Government policy in the field of local self-government and co-operation with local authorities;

b. regrets that:

i. the idea put forward by the Moldovan authorities in February 2005 of setting up a special ministry responsible

for dealing in a co-ordinated manner with all matters relating to local authorities seems to have been abandoned;

ii. the Agency for Regional Development has no real influence over the development of local democracy, but especially on the economic development of local authorities;

c. recommends to the Government of the Republic of Moldova, in view of increasing the efficiency of reforms in the field of local authorities in Moldova, to set up a special ministry responsible for dealing in a co-ordinated manner with all matters relating to local authorities, as well as elaboration of policies related to reforms in this field;

13. More generally, notes a lack of institutionalised and effective dialogue between the central and local authorities and a practice of making important decisions on the rights and interests of local authorities without prior consultation;

14. Invites the Moldovan authorities to conduct regular, open and official consultation of the institutional stakeholders concerned by any reform of relevance to local self-government issues;

15. The Congress consequently invites:

a. the Committee of Ministers to transmit this recommendation and its explanatory memorandum to the Moldovan authorities;

b. the Parliamentary Assembly to take account of the foregoing comments and recommendations in monitoring the honouring of commitments entered into by the Republic of Moldova;

c. a senior representative of the Moldovan authorities responsible for local self-government to present, at a forthcoming session of the Chamber of Local Authorities, the measures taken and/or scheduled in order to implement this recommendation.

1. Debated and approved by the Chamber of Local Authorities on 8 November 2005 and adopted by the Standing Committee of the Congress on 9 November 2005 (see Document CPL (12) 9, draft recommendation presented by Mr P. Mangin (France, L, EPP/CD), rapporteur).

2. CG/Bur (10) 19.

3. CG/Bur (10) 103.

4. CG/Bur (12) 34.

5. Law No. 123-XV of 18 March 2003.

6. Law No. 481-XV of 4 December 2003.

7. Law No. 397-XV of 16 October 2003.