

42nd SESSION

## Monitoring of the application of the European Charter of Local Self-Government in Luxembourg

### Recommendation 470<sup>1</sup>

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

- a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;
- b. Article 1, paragraph 3, of the Statutory Resolution CM/Res(2020)1, stipulating that “[t]he 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 the effective implementation of the principles of the European Charter of Local Self-Government”;
- c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;
- d. the Sustainable Development Goals (SDGs) of the United Nations Development Programme for 2030, particularly Goals 11 for sustainable cities and communities and 16 for peace, justice and strong institutions;
- e. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;
- f. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;
- g. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities, adopted on 4 April 2019;
- h. the previous Congress recommendation on the monitoring of the European Charter of Local Self-Government in Luxembourg (Recommendation 380 (2015));
- i. the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Luxembourg;
- j. the contemporary commentary on the explanatory report to the European Charter of Local Self-Government adopted by the Congress Statutory Forum on 7 December 2020.

1. Discussed and approved by the Chamber of Local Authorities on 23 March 2022 and adopted by the Congress on 23 March 2022, 2nd sitting (see Document [CPL\(2022\)42-03](#), explanatory memorandum), co-rapporteurs: Marjorie CROVETTO, Monaco (L, NR) and Christine CHEVALLEY, Switzerland (R, ILDG).

2. The Congress points out that:

a. Luxembourg is one of the founding members of the Council of Europe, which it joined on 5 May 1949; Luxembourg signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”), all provisions included, on 15 October 1985 and ratified it on 18 March 1987. The Charter entered into force in Luxembourg on 1 September 1988;

b. Luxembourg has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

c. The Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (hereinafter: the “Monitoring Committee”) decided to examine the situation with regard to local democracy in Luxembourg in the light of the Charter. It entrusted Christina CHEVALLEY, Switzerland (L, ILDG) and Marjorie CROVETTO, Monaco (L, NR), with the task of preparing and submitting to the Congress a report on local democracy in Luxembourg;

d. In the course of the remote monitoring meetings, which were held on 6 and 7 October 2021, the Congress delegation exchanged views with representatives of various institutions at all levels of government. The programme of the meetings is appended to the explanatory memorandum;

e. The co-rapporteurs wish to thank the Permanent Representation of Luxembourg to the Council of Europe and all those whom they spoke to during these meetings.

3. The Congress notes with satisfaction that in Luxembourg:

a. the principle of local self-government, as laid down in the European Charter of Local Self-Government, is fully enshrined in the Constitution, recognised by the legislature and the courts and respected;

b. the legal protection of local self-government is fully complied with because local authorities can easily seek a judicial remedy if they consider themselves victims of an unlawful decision or consider that their interests have been damaged by a decision made by the State;

c. the Communal Law reform begun in 2020 is aimed *inter alia* at relaxing the administrative supervision of communes.

4. The Congress expresses concern, however, over the following points:

a. the delimitation of powers between the State and the communes remains unclear;

b. as the prior approval of the Minister of the Interior remains the rule in a certain number of cases, particularly with regard to staff recruitment, the creation of posts, the appointment of local government officers and also communal budgets, there are still forms of administrative supervision in place that do not comply with the Charter;

c. the free disposal of resources still seems to pose a problem despite the financial reform launched in 2017. Communal resources are not keeping pace with the rising cost of discharging local government functions;

d. the procedure for consulting local authorities on all matters concerning them directly, including with respect to their budgets, is not formally recognised in law;

e. the allowances for holding local public office and executive positions seem too low now given the tight labour market and wage levels in Luxembourg.

5. In the light of the above, the Congress recommends that the Committee of Ministers invite the authorities of Luxembourg to:

a. more clearly delimit the powers of the State and the communes so as to establish a framework within which communal self-government can be exercised and develop fully;

*b.* press ahead with the communal reform, not least in order to limit as far as possible the forms of administrative supervision of activities and persons which remain in place at local authority level, based on the principle that supervisory power should be exercised solely for the purpose of ensuring compliance with the law;

*c.* guarantee communes free disposal of resources, by granting them more freedom to decide on their spending in relation to their mandatory tasks, and ensure that communal resources increase in line with the cost of the tasks performed;

*d.* formally enshrine in law the procedure for government consultation of local authorities in order to better secure their right to be consulted on all matters which concern them directly;

*e.* increase the level of allowances for holding local public office and executive positions to make them a more attractive prospect;

*f.* carry out the constitutional review in keeping with the democratic principles enshrined in the Charter, i.e. in such a way as to ensure that the power to appoint mayors and aldermen and to dissolve the directly elected communal council is no longer vested in the central authorities (the Grand Duke or the government);

*g.* sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

6. The Congress asks the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of the present recommendation on the monitoring of the European Charter of Local Self-Government in Luxembourg and its explanatory memorandum in their activities relating to this member State.