

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 471 (2022)¹ Monitoring of the application of the European Charter of Local Self-Government in Turkey

1. The Congress of Local and Regional Authorities of the Council of Europe (hereinafter “the Congress”) refers to:

a. Article 2, paragraph 1.*b.*, of the Charter of the Congress of Local and Regional Authorities of the Council of Europe, 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 2, of the Charter of the Congress of Local and Regional Authorities of the Council of Europe, appended to 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 2030 Agenda for Sustainable Development, in particular Goal 11 on sustainable cities and communities and Goal 16 on peace, justice and strong institutions;

e. 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;

f. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities, adopted on 4 April 2019;

g. Congress Recommendation 301 (2011) on local and regional democracy in Turkey;

h. Congress Resolution 416 (2017) and Recommendation 397 (2017) on the fact-finding mission on the situation of local elected representatives in Turkey;

i. Congress Resolution 450 (2019) and Recommendation 439 (2019) on local elections in Turkey and mayoral re-run in Istanbul (31 March and 23 June 2019);

j. the explanatory memorandum to the present recommendation on the monitoring of the application of the European Charter of Local Self-Government in Turkey;

k. 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;

l. the European Commission for Democracy Through Law (Venice Commission) opinion on the replacement of elected candidates and mayors in Turkey (CDL-AD(2020)011).

2. The Congress points out that:

a. Turkey signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 21 November 1988 and ratified it on 9 December 1992, with entry into force on 1 April 1993; in the course of ratification, Turkey declared itself not bound by Articles 4.6, 6.1, 7.3, 8.3, 9.4, 9.6, 9.7, 10.2, 10.3 and 11;

b. the Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (hereinafter referred to as the “Monitoring Committee”) first instructed Jakob Wienen (Netherlands, EPP/CCE) as rapporteur on local democracy and Yoomi Renström (Sweden, SOC/G/PD) as rapporteur on regional democracy, to prepare and submit a report on the monitoring of the application of the European Charter of Local Self-Government in Turkey to the Congress; a two-part visit to Turkey was carried out by the Congress delegation, which was assisted by Professor Angel M. MORENO, President of the Group of Independent Experts on the Charter, and the Congress secretariat.

c. the monitoring visit took place from 1 to 4 October 2019 (first part of the visit) and from 11 to 13 November 2019 (second part of the visit). The report was adopted by the Monitoring Committee in February 2020. The draft recommendation and resolution could not be adopted during the Congress session due to the Covid-19 pandemic. In the meantime, both rapporteurs have left the Congress. Therefore, the Monitoring Committee appointed Vladimir Prebilič, Slovenia (L, SOC/G/PD), and David Eray, Switzerland (R, EPP/CCE), and instructed them to update the explanatory memorandum before its submission to the Congress at one of its sessions in 2022. To this end, a third part of the monitoring visit took place on 1 December 2021. In Turkey, the Congress delegations met representatives of various institutions at all levels of government, as well as leaders of main national parties, non-governmental organisations and foreign diplomatic representatives. The detailed programmes of the three parts of the visit are appended to the explanatory report of this recommendation;

d. the co-rapporteurs wish to thank the Permanent Representation of the Republic of Turkey to the Council of Europe and all those whom they met during the visits for the information they provided and comments they made.

3. The Congress notes with satisfaction:

the impressive turnout in local elections (above 84% in 2019) in Turkey, which is one of the highest in the Council of Europe member States and shows a strong interest in local self-government among the citizens.

4. The Congress expresses its concerns in particular on the following issues:

1. Debated and adopted by the Congress on 23 March 2022, 2nd sitting (see Document CG(2022)42-14, explanatory memorandum), co-rapporteurs: Vladimir PREBILIC, Slovenia (L, SOC/G/PD) and David ERAY, Switzerland (R, EPP/CCE).

a. the limited progress in implementing Congress Recommendation 397 (2017) on the fact-finding mission on the situation of local elected representatives in Turkey; the government continues to suspend mayors when a criminal investigation is opened against them (Article 7.1 of the Charter), on the grounds of an overly broad definition of “terrorism” in the anti-terror legislation, and to replace them by non-elected officials (Article 3.2) thus seriously undermining the democratic choice of Turkish citizens and impeding the proper functioning of local democracy in Turkey;

b. the refusal of certain provincial electoral administrations, in violation of the principle of fairness in elections, to grant to several candidates who won the mayoral elections in some municipalities located in the south-east of Turkey the required certificate of elections (“*mazbata*”) which is a pre-requisite to entering the position of mayor (Article 3.2);

c. the governor’s double function as a State agent and a chairman of the provincial executive committee which does not permit the necessary separation between the State and the local administration contrary to the spirit of the Charter (Article 3.2);

d. administrative tutelage over the activities and decisions of local authorities is still enshrined in the constitution and applied in practice; the State overregulation and interventionism in planning decisions of local authorities take the form of an efficiency control over the tasks and responsibilities of local authorities and limit their capacity to enjoy full and exclusive powers (Articles 4.4 and 8.2);

e. the lack of consultation of affected local authorities during the boundary changes enacted by legislation (Article 5) which also reflects the unsatisfactory level of communication and intergovernmental dialogue between the central government and local authorities in Turkey in general;

f. the limited capacity local governments have to determine the rate of local taxes (Article 9.3); a substantial proportion of local revenues (more than half) still comes from the State budget which generally limits the financial autonomy enjoyed by local authorities;

g. the additional pressures faced by local authorities in the south-east of the country in delivering basic services such as housing, food and sanitation due to an unprecedented influx of refugees and asylum seekers.

5. In the light of the foregoing, the Congress requests that the Committee of Ministers invite the Turkish authorities to:

a. modify the definition of terrorism in the current anti-terror legislation, so that this concept is defined in a way which does not allow for an overly broad interpretation and ensures a strict governmental enforcement and respect of human rights and values of representative democracy;

b. stop the current practice of suspending mayors without court decisions, make all possible efforts to reconcile the legitimate fight against terrorism with the requirements of local democratic life and, accordingly, use the practice

of suspension of mayors with the greatest possible caution and restraint, with the aim to respect the presumption of innocence and the system of democratically elected representatives;

c. discontinue the practice of appointing a governmental trustee in municipalities where the mayor has been suspended and modify the legal framework so that whenever a mayor is suspended, opportunity is given to the council to appoint an interim or acting mayor from among its members, in accordance with the possibility contained in the original version of the Municipality Law of 2005 (Article 45) and until the procedural situation of the suspended mayor is clarified;

d. ensure that the candidates who were admitted to run in the elections and won them can effectively enjoy their right to carry out their mandate;

e. introduce the necessary legal amendments so that the governor will no longer be *de jure* the Head of the Special Provincial Administration and the chairman of its executive committee, and to allow the general council of a local authority to appoint and dismiss the head and the chairman of the executive committee or, failing this, to make these positions elected directly by the people;

f. implement the constitutional principle of administrative tutelage at the lowest possible level of intensity, in the spirit of the Charter, to protect and ensure local autonomy and reduce supervision over local authorities, especially in the domain of finances, loans and planning, by making them more objective and predictable;

g. reinforce consultation of local authorities, in particular in the case of amalgamations or changes in the local authorities’ boundaries;

h. increase the proportion of local authorities’ own revenues and enhance their regulatory and rate-setting power in respect of their own taxes through fiscal decentralisation;

i. take measures in order to develop the internal auditing and financial controls of local authorities;

j. consider ratification of Articles 7.3, 9.4, 9.7 and 10.3 of the Charter since they are respected in practice;

k. take appropriate measures to encourage the involvement of women in local political life;

l. 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 calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the application of the monitoring of the European Charter of Local Self-Government in Turkey and the explanatory memorandum in their activities relating to this member State.