

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 302 (2011)¹ Local and regional democracy in Austria

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

a. Article 2, paragraph 1.*b* of Statutory Resolution CM/Res(2007)6 relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3 of Statutory Resolution CM/Res(2007)6 relating to the Congress, stipulating 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. the explanatory memorandum on local and regional democracy in Austria drawn up by the rapporteurs, Marc Cools and Irene Loizidou following an official visit to Austria from 24 to 26 March 2010.

2. The Congress recalls that:

a. Austria ratified the European Charter on Local Self-Government (ETS No. 122) on 23 September 1987. The charter entered into force on 1 September 1988. On depositing the instruments of ratification, Austria stated in its declaration that it would not be bound by Article 4, paragraphs 2, 3 and 5, Article 7, paragraph 2, Article 8, paragraph 2 and Article 11 of the charter. This declaration is in line with the provisions of Article 12, paragraph 1 of the charter;

b. the present recommendation on local and regional democracy in Austria is the first one since Austria’s ratification of the charter;

c. the Institutional Committee² of the Congress appointed Marc Cools and Irene Loizidou as co-rapporteurs to prepare and submit a recommendation on local and regional democracy in Austria.

3. The Congress wishes to thank Austrian authorities at central and local levels, the Association of Austrian Towns and Cities, the Association of Austrian Municipalities, experts and all other interlocutors for the information conveyed to the delegation.

4. The Congress notes with satisfaction that:

a. local governments in Austria derive their powers from the federation and/or *Länder* under a system that reflects the

principle of subsidiarity and in general is in conformity with the norms of the European Charter of Local Self-Government;

b. the co-operative nature of Austrian federalism (“co-operative federalism”) is a key element of the Austrian federal system, implying that all changes are carried out through both formal and informal consultation mechanisms between municipalities, federated states (*Länder*) and the federation.

5. The Congress notes that:

a. a reform of the Austrian federal system has been on the political agenda for a long time. In the last decade several attempts have been made to restructure the federal system and to clarify the competences of the different levels through constitutional change, but they have not produced tangible results;

b. Austria 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 207) although Article 117, paragraph 8 of the Federal Constitution determines that the legislation of the *Länder* can foresee the direct participation of the citizens;

c. local governments are subject to a considerable degree of supervision by federal and *Länder* authorities;

d. mayors are subject to instructions from the federal authorities when exercising tasks delegated to municipalities.

6. The Congress notes with concern that:

a. despite the fact that municipalities are assigned powers of their own, which are supplemented by an array of delegated tasks, in practice, there are several important areas where responsibilities overlap or where closely related activities are performed and co-financed by different levels of government;

b. municipalities have practically no discretion with regard to local taxes and the proportion of own-source taxes in budget revenue, amounting to 21%, is relatively low. The fiscal autonomy of both Austrian municipalities and *Länder* is too limited to allow the effective decision-making powers. This is evident from the low share of own-source taxes at the subnational level;

c. Article 15a of the Federal Constitutional Law, giving the possibility to *Länder* to conclude treaties and/or agreements with the federation and with other *Länder* on matters within their respective spheres of competence, does not allow for the participation of municipalities in such agreements.

7. The Congress recommends that the Committee of Ministers invite the Austrian authorities to take account of the following suggestions:

a. to consider an overall institutional reform of the federal system in Austria. Such a reform is necessary for federalism to operate effectively in Austria in the future and for Austrians to continue accepting it as a legitimate system. The reform should concentrate, *inter alia*, on modifying the composition and functions of the Federal Council in order to make it better suited to representing *Länder* interests,

transforming the system of indirect federal administration to direct *Land* administration, introducing Regional administrative courts and modifying the division of powers;

b. to elaborate systematic legislation, in accordance with the principle of subsidiarity, clarifying the competences of each level of government (municipalities, federated states and the federation) on the basis of the work of the Austrian Convention and more recent reform proposals;

c. to strengthen the role of municipalities in the preparation of the Financial Equalisation Law, by introducing legally binding consultation with the Austrian Association of Cities and Towns and the Austrian Association of Municipalities during the negotiation process;

d. to grant to municipalities and *Länder* larger tax autonomy allowing them to raise an increasing amount of own-source taxes and to make sure that when their competences are extended, this is followed by the allocation of the necessary financial resources;

e. to enhance the flexibility of municipality associations (*Gemeindeverbände*) by abolishing the remaining limitations to intermunicipal co-operation across *Land* borders and by increasing the competences of such associations;

f. to consider modifying the Federal Constitutional Law in order to allow municipalities to participate in agreements between the federation and the *Länder* as foreseen by Article 15a of the Federal Constitution, as is already the case for the “Consultation Mechanism” and the “Austrian Stability Pact”;

g. to consider modifying existing legislation in order to tackle the issue of liability of mayors in executing their functions as well as to improve the social conditions of mayors, such as their pension and unemployment schemes;

h. to refrain from extending the competences of the federal Court of Auditors with a view to supervising the budget of municipalities with less than 10 000 inhabitants, unless the *Land* concerned expressly requests this;

i. to take into consideration Congress Recommendation 288 (2010) on achieving sustainable gender equality in local and regional political life, and to take concrete measures to encourage better representation of women at local and regional level;

j. to guarantee a minimal representation of the Association of Austrian Towns and Cities and the Association of Austrian Municipalities in the Committee of the Regions of the European Union;

k. to reconsider the restrictions on the extent of the European Charter of Local Self-Government articles by which Austria is bound with a view to lifting some or all of them. This could be the case for Article 11 of the charter, which is respected in practice in Austria;

l. to sign and ratify the Additional Protocol to the European Charter on Local Self-Government on the right to participate in the affairs of a local authority in the near future.

8. The Congress recommends that the Parliamentary Assembly take account of the aforementioned observations and recommendations, in the framework of its procedure of periodic reporting on member states not currently under a monitoring or post-monitoring procedure.

The Congress recommends that the Austrian authorities responsible for local self-government appoint a high-level government representative to attend one of the Congress sessions to make a presentation on the state of local and regional democracy in Austria following the adoption of this recommendation.

1. Debated and adopted by the Congress on 24 March 2011, 3rd Sitting (see Document [CG\(20\)8](#), explanatory memorandum), rapporteurs: I. Loizidou, Cyprus (R, EPP/CD) and M. Cools, Belgium (L, ILDG).

2. Following the Congress reform, the monitoring activities carried out by this committee were taken over by the Monitoring Committee set up on 1 December 2010.