

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Recommendation 113 (2002)¹ on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy)

Application of Article 3, paragraph 2 of the European Charter of Local Self-Government on the basis of the 5th general report on monitoring of the implementation of the Charter

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

1. Having regard to Article 3, paragraph 2 of the European Charter of Local Self Government (hereafter “the Charter”);
2. Noting that the Charter is presently the only international treaty which defines local self-government’s essential characteristics and institutional framework, chiefly in Article 3 paragraph 2;
3. Having taken note of the 5th general report on political monitoring of the implementation of the Charter, relating to the institutional framework of local self-government (Article 3, paragraph 2) (hereafter “the 5th report”), submitted by Mr Anders Knape (Sweden, L) with the assistance of the Group of Independent Experts on the Charter attached to the Institutional Committee of the Congress;
4. Convinced that rights of local self-government must be exercised by democratically elected authorities;
5. Pointing out that all forms of democratic local government entail the existence of representative assemblies directly elected by the people (with or without subordinate executive organs), which, under Article 3, paragraph 2, shall not affect recourse to assemblies of citizens, referenda or any other form of direct citizen participation where permitted by law;
6. Noting that the laws of the member states admit of a variety of procedures concerning both the methods of electing or appointing the executive and the organisation of relations between representative assemblies and the executive;
7. Observing that in the vast majority of member states the local executive is elected either by the assembly or directly by the people;
8. Noting also that direct election of mayors by the people is becoming an increasingly frequent method of choosing the head of the executive in member states of the Council of Europe;
9. Welcoming the trends in the member states’ legislation and practice, which show that election of the local executive is becoming increasingly common;
10. Considering that election of the local executive is the most appropriate procedure;
11. Considering that, in any event, all executive organs, whatever the method of their election or appointment, must regularly account for the manner in which they exercise their authority;
12. Deeming that national law must guarantee representative assemblies the means of effective scrutiny of the executive’s action, pursuant to Article 3, paragraph 2 of the Charter, which scrutiny may be exercised, *inter alia*, through voting of the local budget and local taxes, approval of reports on implementation of the budget or urban development plans, and adoption of local policies for an entire term of office;
13. Bearing in mind that executive organs’ responsibility to assemblies composed of elected members, provided for in Article 3, paragraph 2 of the Charter, may take different forms depending, in particular, on the method of electing or appointing the executive;
14. Noting that management of large municipalities and the technical nature of the decisions this entails often require considerable availability on the part of the executive;
15. Remaining convinced, nonetheless, that professional administrators must perform their duties under the supervision of the elected body;
16. Considering that the people must be consulted wherever possible when decisions are to be taken on important civic matters;
17. Considering also that, as stated in the preamble to Recommendation No. R (96) 2 of the Committee of Ministers to member states of the Council of Europe, local referenda “may be seen as an instrument of direct participation which places responsibility on all citizens and can provide democratic solutions to situations of conflict and help strengthen local autonomy”;
18. Having regard to Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life;
19. Recalling that, as regards changes in local authority boundaries, Article 5 of the Charter provides that such changes “shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute”;

20. Observing that the present recommendation constitutes a contribution by the Congress to the Council of Europe integrated project Making Democratic Institutions Work,

21. Invites member states to take account of the Congress's observations and recommendations, as set out in the appendix to this recommendation, when they are required to take decisions affecting the organisation of local authorities;

22. Invites member states that have not yet done so to sign and/or ratify the European Charter of Local Self-Government (ETS No. 122);

23. Invites member states that have not yet done so to sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144), and to take steps to promote the European Charter on the Participation of Young People in Municipal and Regional Life.

Appendix

Principles governing relations between the public, the local assembly, and the executive in local democracy

1. *Direct, representative local democracy*

a. The 5th report notes that in all member states of the Council of Europe, local democracy is based on representation of the local community by an assembly directly elected by the people. This fundamental principle has long been established in many states.

b. At the same time, for the great majority of European municipalities today, direct democracy in its purest form, that is a meeting of the population to manage local affairs, is more often than not ruled out by both the size of the population and the complexity of the matters being dealt with.

c. The Congress considers that, in important matters of local public interest, recourse to a referendum should be envisaged wherever possible. This form of consultation entails a procedure whereby the local population is required to take a genuine decision binding on the local authorities. In matters of lesser importance a popular consultation may also be envisaged, a procedure whereby the population is merely required to give an opinion which is not binding on the local elected representatives, with whom the final decision lies in such situations.

d. The Congress has noted signs of a high level of abstention in local elections, which is a cause for concern. It believes that election campaigns and the act of voting are unique opportunities for citizens to have their say in local policy making.

2. *Public participation*

a. It is essential to the proper functioning of local democracy that the links between local authorities, elected representatives and the public be strengthened.

b. This can be achieved, *inter alia*, by establishing and promoting advisory councils (of foreigners, young people,

senior citizens, children, etc.) or neighbourhood councils, reflecting the entire range of interests of the local population, subject to the proviso that any final decision will lie with the elected representative body, except where local affairs are managed by citizens' assemblies or where the law provides for any other form of direct public involvement in the management of community affairs.

The national legislation of the member states should make it generally compulsory for local authorities to inform the public in advance of their overall policies.

A valuable means of strengthening links between municipal authorities and the public is to publicise decisions or debates in progress concerning community affairs as widely as possible (through official registers, notice boards, Internet sites, the local press, official local authority newsletters or local radio and television). Methods of publication should be varied, embrace modern trends and reach as wide an audience as possible.

Public meetings of the local assembly should be the rule, as is the case in the majority of member states, and closed sessions the exception. This rule should normally be established by law, which should provide for proceedings to take place in camera only in specific cases, in order to protect privacy or citizens' fundamental rights.

The public must be entitled to put questions to local officials at meetings of the assembly and be given regular opportunities to consult elected representatives and local government officers.

c. Citizens' right of access to administrative documents must be upheld by local authorities in accordance with national law, it being understood that due account will also be taken of protection of privacy, citizens' fundamental rights and of municipalities' financial capabilities. In this connection, the Congress draws attention to Recommendation Rec(2002)2 of the Committee of Ministers of the Council of Europe to member states on access to official documents.

d. As already pointed out by the Congress in its Recommendation 61 (1999), the existence at local level of the institution of ombudsman or mediator can have a beneficial effect in terms of good governance, stronger links between the public and local authorities, and greater openness and efficiency in local administration.

3. *Relations between the assembly and the executive*

a. The 5th report described a variety of methods of electing or appointing the executive, reflecting the diversity of historical backgrounds and institutional practices in the member states. The Charter itself does not appear to impose a standard method of choosing the executive. On the basis of current practices in the member states, as noted in the 5th report, procedures for electing or appointing the executive can be classified in four categories: election or appointment by the local assembly; direct election by the people; appointment by central or regional government or an independent authority; and exercise of executive powers under the assembly system. It is noted that in many

member states, local authorities have an executive elected directly by the people. In view of trends in member states' practice, a procedure which fails to provide for election of the local executive no longer appears appropriate in the context of modern-day local democracy.

Whatever the method of electing or appointing the executive, it is important to note that Article 3, paragraph 2 of the Charter stipulates "This right [of local self-government] shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them." The Charter thus establishes the general principle that the executive is answerable to the representative bodies, irrespective of the method of the executive's election or appointment.

b. On reading Article 3, paragraph 2 of the Charter, it can therefore be seen that it is indeed the representative assembly that is required to deal with matters of greatest importance to the local community, such as budgetary or tax matters.

c. However, in a number of cases, for specific reasons such as the ineffectiveness or lack of supervisory procedures at the assembly's disposal, the short term of office of assembly members, the weak foundations of democratic traditions, or the specific role played by the chief administrative officer, difficulties may arise in complying with the Charter principle that the executive is responsible to the representative body.

d. The 5th report notes that in some member states a debate is taking place on rebalancing the system in favour of the assembly. It takes the view that, in general, an institutional balance must be sought at local level and the assembly must have means of exercising effective supervision over the executive.

e. The following points are of relevance to achieving this balance and ensuring that the executive can be politically called to account:

i. except in cases where the executive is appointed by central government, the concept of "responsibility" in accordance with Article 3, paragraph 2 of the Charter does not necessarily mean that the executive must be dismissible by the assembly. Nor can the possibility of dismissal be precluded if it is provided for by law. Moreover, resignation (or dismissal) of the executive may also be an indirect consequence of the assembly's exercising certain rights of another nature. It follows that the absolute minimum necessary for the responsibility requirement to be met is introduction of a system of effective supervision of the executive by the assembly, allowing regular scrutiny of the executive's activities.

As a general rule, to achieve this while relieving the assembly of some burdensome tasks and enhancing the efficiency of local administration, national law should foster effective assembly supervision of the executive by allowing the assembly to be relieved of certain

management tasks so as to permit it to concentrate on its local policy-making function (first and foremost budgetary and tax decisions) and supervisory duties. Delegation of tasks by the assembly to the executive may be an interesting possibility in this context. Supervision by the assembly could principally be carried out through the exercise of certain of its fundamental powers and responsibilities, such as approving budgets, voting local taxes, adopting by-laws, regulations and urban development plans, deciding disputes and approving reports on implementation of the budget. These must never be delegated;

ii. where the executive is elected by the people, it should be required to present a political programme at the beginning of its term of office. To deal with disagreements between a local assembly and an executive elected by the people, the Congress suggests introducing procedures whereby any deadlock may be resolved (especially any dispute between the executive and the assembly which paralyses the decision-making process). Deadlock can be avoided if elections to the executive and the assembly are held simultaneously.

In addition, the supervisory procedures at the assembly's disposal should ensure that the assembly is able to call the executive to account, possibly with public involvement, before the end of the executive's term of office, with removal of the latter from office as a possible outcome. Where those in charge of the public authority are directly elected by the people, any dismissal must be endorsed by the people. However, these procedures should at the same time carry all the guarantees necessary for stable local government (precise definition of issues on which the executive can be called to account, qualified majorities for votes of no confidence, reasonable time-limits for implementing the procedure);

iii. with specific regard to the responsibility of executive organs appointed by central or regional government or an independent authority and the question whether such organs can be called to account by the assembly, the Congress suggests that the national laws of the member states should provide for procedures enabling the assembly to remove the executive from office (that is, bring about its resignation or dismissal), which would be binding on the authority appointing the executive. It can consequently be held that, where an executive organ appointed by central or regional government or an independent authority is not dismissible by the assembly, the Charter requirements of responsibility to the assembly and, at a more general level, the existence of local authorities "endowed with democratically constituted decision-making bodies", in the words of the preamble to the Charter, are not satisfied;

f. Other means of supervision of the executive by the assembly may also be implemented. These include:

i. granting elected representatives the following essential rights:

- to request a meeting of the assembly;
 - to have an item placed on the agenda;
 - to put written or oral questions to the executive;
- ii. enhancing the opposition's supervisory capacities by:
- organising a special sitting of the assembly devoted to considering opposition proposals and granting the opposition the possibility of voicing its opinion in official municipal newsletters;

- a system whereby the municipality makes it easier for opposition members to perform their duties.

1. Debated and approved by the Chamber of Local Authorities on 5 June 2002 and adopted by the Standing Committee of the Congress on 6 June 2002 (see Doc. CPL (9) 2 revised, draft recommendation presented by Mr A. Knape, rapporteur).