

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Recommendation 103 (2001)¹ on local and regional democracy in Bosnia and Herzegovina

The Congress,

1. Recalling:

a. Statutory Resolution (2000) 1 of the Committee of Ministers 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;

b. the interim report on local and regional democracy in Bosnia and Herzegovina prepared by MM. Haegi and Martini and adopted by the CLRAE Standing Committee on 2 March 2000;

c. the decision of the Bureau to update this report in connection with the imminent accession of Bosnia and Herzegovina to the Council of Europe, with a view to establishing criteria that could serve as basis for post-accession monitoring in the area of local and regional democracy;

d. the recent visit of the rapporteurs, MM. Newbury (UK) and Kittelmann (Germany) in Bosnia and Herzegovina and their meetings with representatives of state, entity, canton and local authorities;

2. Considering that:

a. the institutional structure of Bosnia and Herzegovina and its entities – the Federation of Bosnia and Herzegovina and the Republika Srpska – is extremely complex, shaped by the specific requirements of multi-ethnicity;

b. authority in matters of local and regional self-government is vested in the entities, which must therefore ensure compliance with the relevant European principles and standards through their constitutions and their respective legislation;

c. in one of the entities – the Federation – this authority is further allocated to the cantons, which can assign varying degrees of rights and responsibilities to the municipal level within the framework of canton local government legislation;

d. within the cantons, public authority is exercised according to parliamentary principles which makes it

possible to regard the cantons as constituent elements of regional democracy, as defined by the draft European Charter of Regional Self-Government;

e. in the other entity – the Republika Srpska –, which has no middle tier of public administration, the entity level performs tasks that belong to the cantons in the federation;

f. legislation on local self-government in the Republika Srpska and in the cantons of the Federation is on the whole compatible with the principles of the European Charter of Local Self-Government, but a number of problems persist in areas such as:

– the extent of administrative supervision exercised over local authorities;

– the insufficient recourse for local authorities to judicial remedy;

– the lack of freedom of municipalities to determine their own internal administrative structures;

3. Notes the following main problems in the functioning of local and regional democracy:

a. decisions concerning public affairs often continue to be based on ethnic criteria. This is also true for the management of local governments, where ethnic considerations frequently lead to distortive behaviour, for example, administrative staffs are appointed along party and ethnic lines and officials raise obstacles to delay the return of refugees;

b. the horizontal lines of communication linking the various levels of authorities of the two entities are weak, co-operation between municipalities with a different ethnic make-up progresses slowly and there are communication problems even between Federation cantons with different ethnic majorities;

c. the relationships between the different levels of authorities within both entities are problematic: the right of the cantons and the Republika Srpska entity to review and overrule municipal decisions may lead to political manipulation based upon budgetary and other priorities of the higher authority. The actual legal supervision, controlling, and auditing of municipalities is not regulated in a uniform manner and varies by canton and between the entities;

d. the status and competencies of cities and capitals are not sufficiently regulated and their relationships with higher-level authorities, as well as with their constituent municipalities, are unclear;

e. local authorities' tasks and competencies are not regulated in a uniform and unambiguous manner: the wording and definitions of these tasks in the various laws are not precise, allowing great differences in interpretation. Performance standards for mandatory tasks are not clarified. Additionally, a number of local authorities – especially in the Republika Srpska – suffer from a lack of economy of scale that makes it difficult to apply a mandatory list of tasks to all municipalities;

f. municipalities are strongly dependent upon transfers from higher level authorities: in the federation each canton has its own revenue-sharing formula that it can alter on an annual basis. In the Republika Srpska the situation is similar, with the entity government directly sharing certain taxes with the municipalities. Genuine local tax revenues are extremely low in both entities;

g. in many cases there is a serious imbalance between the responsibilities of local authorities and the resources available to them. Patrimony over former state assets, municipal assets, public utilities and other forms of communal ownership has not been settled. There are many obstacles to genuine municipal borrowing for capital purposes. There are no specific mechanisms for the equalisation of resources;

4. Recommends that the Committee of Ministers establish the following requirements for Bosnia and Herzegovina in the field of local and regional democracy and charge the CLRAE with monitoring the progress of honouring these obligations following the country's accession to the Council of Europe:

a. given that the state of Bosnia and Herzegovina has virtually no competence in the functioning of regional and local government within the country, the two constituent entities shall be required in the first place to make a strong political commitment to genuine decentralisation at the local level;

b. the two entities should aim at harmonising the basic conditions of local self-government on their territories with the principles laid down in the European Charter of Local Self-Government, if necessary by introducing constitutional amendments to that end;

c. the Republika Srpska should revise the Law on Local Self-Government passed in November 1999, taking into account the comments made by the CLRAE;

d. the Federation, which currently has little influence on local government legislation within its cantons, should take the necessary steps, if necessary by amending its basic laws, to ensure that legislation in all ten cantons is brought into line with the proposals of the CLRAE;

e. the laws should regulate the nature and extent of the supervision which the higher levels exercise over local authorities and the relations between the various levels of government, and this legislation should go hand in hand with legal structures for the settlement of any disputes between the different levels;

f. both entities should develop a tax system which takes account of the different tiers of government, does not

constitute a means of exercising supervision over local authorities and gives them adequate financial resources of their own;

g. legislation at the various levels should harmonise and clarify municipal functions and performance standards, establish long-term commitments to certain revenue-sharing formulae, clarify capital improvement obligations, introduce transparency in the grant systems administered by higher-level authorities and establish criteria for the introduction of a professional, non-partisan civil service;

h. both entities, as well as the cantons in the federation, should consult the Council of Europe on major legislative reforms in the field of local and regional self-government;

i. both entities should take all necessary measures to guarantee implementation of the legislation in matters of local and regional democracy and establish appropriate legal and administrative structures to this end;

j. both entities should implement programmes to foster closer links and co-operation between their municipalities (including municipalities with different ethnic composition), to reinforce the dialogue between the local government associations of the two entities and to facilitate the return of displaced persons;

k. both entities, if they have not already done so, should, in the framework of their internal procedures, individually adopt the following Council of Europe conventions:

- the European Charter of Local Self-Government,
- the European Framework Convention on Transfrontier Co-operation,
- the Framework Convention for the Protection of National Minorities,
- the European Charter for Regional or Minority Languages;

l. following accession to the Council of Europe, the two entities should jointly instruct the Government of Bosnia and Herzegovina to deposit the instruments of ratification with the Secretary General of the Council of Europe.

1. Debated and adopted by the Standing Committee of the Congress on 9 November 2001 (see Doc. CG (8) 23, draft recommendation presented by Mr C. Newbury and Mr P. Kittelmann, rapporteurs).