

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 336 (2013)¹ Local and regional democracy in Spain

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(2011)2 of the Committee of Ministers relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto, 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 the above-mentioned Statutory Resolution, 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. its Resolution 307 (2010) Revised on procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No.122);

d. its Recommendation 219 (2007) on the status of capital cities, Recommendation 132 (2003) on municipal property in the light of the principles of the European Charter of Local Self-Government and Resolution 299 (2010) on the follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009);

e. its previous texts on local and regional democracy in Spain – Recommendation 121 (2002) and Resolution 147 (2002).

2. The Congress underlines that:

a. Spain became a member of the Council of Europe on 24 November 1977. It signed the European Charter of Local Self-Government (ETS No. 122, hereafter referred to as “the charter”) on 15 October 1985 and ratified it on 3 February 1988. The charter entered into force in respect of Spain on 1 September 1988;

b. Spain has declared itself not to be bound by Article 3, paragraph 2 of the charter and has formulated a declaration which reads as follows: “The Kingdom of Spain does not consider itself bound by paragraph 2 of Article 3 of the Charter to the extent that the system of direct suffrage foreseen therein should be implemented in all local authorities falling within the scope of the Charter”;

c. Spain 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), Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206), the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159) or Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No.169);

d. the Congress Monitoring Committee appointed Mr Marc Cools (Belgium, L, GILD), and Mr Leen Verbeek (Netherlands, R, SOC), as rapporteurs and instructed them to prepare and submit to the Congress a report on local and regional democracy in Spain in order to update the previous Resolution 147 (2002) and Recommendation 121 (2002);

e. a first visit to Spain (Seville, Toledo and Madrid) took place from 5 to 8 June 2012. The second monitoring visit took place in Madrid on 14 January 2013;

f. the delegation would like to thank the Permanent Representation of Spain to the Council of Europe, the Spanish authorities at all level of governance, the national association of Spanish Municipalities and Provinces (FEMP) and all the persons with whom discussions took place, for their readiness to assist, their interest in the Congress’s work and their co-operation throughout.

3. The Congress notes with satisfaction:

a. the fact that Spain is generally fulfilling its obligations with regard to the European Charter of Local Self-Government;

b. the direct incorporation of the charter into Spain’s national law, which enables legal interpretation by the domestic courts;

c. the regular working relationship between the central government and the FEMP, and the existence of a wide variety of instruments for co-operation between the national government and the executives of the autonomous communities;

d. the entry into force of the law on budgetary stability and financial sustainability of public administration in 2012, which serves to reduce transfers of public resources and strengthen the capacity of public administration to control their own expenses;

e. the creation in October 2012 of a special Commission for the Reform of Public Administration, with the scope to eliminate administrative burdens by simplifying rules and procedures, and avoid overlap of competences;

f. the good practices with regard to the right to participate in public affairs at local level;

g. the adoption of the Act No. 22/2006 of 4 July 2006 on the capital status and special regime of Madrid, and the direct

reference to the provisions of the charter in the preamble of this Act.

4. The Congress regrets:

a. the lack of precision concerning the distribution and delegation of competences and responsibilities to local and regional authorities;

b. the overlapping competences among various government levels, which results in a loss of financial resources for local and regional authorities, as well as a loss of efficiency of public services delivered to the citizens;

c. the large disparity in the salaries of local elected officials and the reduction of deputies' allowances in regional parliaments;

d. the transfer of powers to municipalities without adequate financial resources;

e. the inefficient policies and measures with regard to the fiscal autonomy of municipalities, a situation which obliges local authorities to depend on State and regional transfers and not on their own revenues;

f. the difficulties of management of small municipalities and the insufficient financial equalisation procedures or equivalent measures to correct the effects of the unequal distribution of financial resources between smaller and larger municipalities;

g. the proposal of streamlining municipalities which is contained in the government reform programme;

h. the lack of progress in the reform of the Senate aimed at giving this institution a real role of territorial representation.

5. The Congress recommends that the Committee of Ministers invite the Spanish authorities to:

a. ensure that the proposed governmental reforms to transform the Spanish administration into a system in which "one competence corresponds to one administration" is conducted in accordance with the principle of subsidiarity (Article 4.3);

b. continue, during the preparatory work of the bill for the Local Administration Rationalisation and Sustainability Act, the dialogue with both the FEMP and with the various autonomous communities taking into account, when possible, the institutional and historical features of some of them for the reforms to be adopted;

c. identify, through the Commission for the Reform of Public Administration, concrete measures to eliminate the duplication of competences between different levels of government in order to increase the efficiency of public services (Article 4.4);

d. revise legislation in order to fix a minimum and maximum threshold for remunerating local elected officials in accordance with Article 7.2 of the European Charter of Local Self-Government and, in the same spirit, to provide rules of remuneration for members of the parliaments of the autonomous communities, which will allow them to perform their duties properly;

e. ensure that, in accordance with the legislation, each transfer of powers to local authorities is guaranteed by adequate financial resources (Article 9.2);

f. boost the fiscal autonomy of municipalities, with the aim of ensuring the sustainability of the financial situation of local authorities, by creating appropriate conditions and policies so that the major form of revenue for municipalities comes from their own resources and not from transfers that are awarded by the regions and by the State (Article 9.3);

g. make sure that greater management support is given to smaller municipalities by the provincial administration and ensure a system of equalisation between municipalities, in order to transfer resources from richer to poorer (Article 9.5);

h. define in law the relationship between the State, the Conference of Presidents of Autonomous Communities and the FEMP;

i. continue to support local and regional administrations during the governmental reform programme in order to strengthen the capacity of public administrations to control their own expenses;

j. ensure that an adequate consultation process is duly organised if the national authorities implement measures to merge municipalities;

k. reform the institution of the Senate with the aim of conferring on this institution a real role of territorial representation;

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

6. The Congress invites the Committee of Ministers of the Council of Europe to take into consideration the present recommendation on local and regional democracy in Spain, as well as the explanatory memorandum, in its own monitoring procedures and other activities related to this member State.

1. Debated and adopted by the Congress on 19 March 2013, 1st Sitting (see Document CG(24)6PROV, explanatory memorandum), rapporteurs: Marc Cools, Belgium (L, ILDG), and Leen Verbeek, Netherlands (R, SOC).