

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 324 (2012)¹ Local and regional democracy in Bosnia and Herzegovina

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

a. Article 2, paragraph 1.b, of Statutory Resolution of the Committee of Ministers CM/Res (2011) 2 relating to the Congress of Local and Regional Authorities of the Council of Europe, 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 aforementioned Statutory Resolution CM/Res (2011) 2, which provides 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) REV on the 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 Resolution 299 (2010), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply given by the Committee of Ministers to Congress Recommendation 282 (2010) [CM/Cong(2011)Rec282final] encouraging the governments of member states to take account of the aforementioned Reference Framework in their policies and reforms;

e. the explanatory memorandum of this recommendation on local and regional democracy in Bosnia and Herzegovina.

2. The Congress notes that:

a. Bosnia and Herzegovina ratified the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 12 July 2002 without reservations or declarations, and the instrument came into force in respect of the country on 1 November 2002;

b. Bosnia and Herzegovina 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);

c. the situation of local and regional democracy in Bosnia and Herzegovina was the subject of a monitoring report and Congress Recommendation 202 (2006);

d. on 23 March 2011, its Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee) appointed Mr Jean-Marie Belliard and Mr Beat Hirs as rapporteurs tasked with presenting a new report to the Congress on local and regional democracy in Bosnia and Herzegovina;

e. the Congress delegation made two visits, from 11 to 14 April 2011 and on 12 and 13 December 2011 respectively. Meetings were held in Sarajevo, Banja Luka, Brčko and Mostar with representatives of state institutions, the component entities – the Federation of Bosnia and Herzegovina, the Republika Srpska – and the Brčko District, as well as the local authorities and their associations, and the international community;

f. the rapporteurs wish to thank the Permanent Representation of Bosnia and Herzegovina to the Council of Europe and all the people they met during the visit.

3. The Congress notes with satisfaction:

a. the general compatibility of Bosnia and Herzegovina’s legislation on local self-government with the principles of the European Charter of Local Self-Government. The legislative framework in Bosnia and Herzegovina and the entities has improved and now includes explicit references to the Charter;

b. the increased judicial protection of local self-government in both entities;

c. the consensus about the need to ensure consistency in the legislation on local self-government at all levels;

d. the expansion of inter-municipal co-operation between Sarajevo and East Sarajevo;

e. legislative progress at local level in some areas such as education, local transport and the road network;

f. the establishment in January 2010 of the Ministry of Administration and Local Self-Government of the Republika Srpska and the practice of biannual consultations between members of the Republika Srpska Government, mayors and associations of communes and towns;

g. the adoption on 3 February 2012 of the Law on the census of population, households and housing units by the House of Peoples;

h. the development of regional initiatives conducive to reconciliation in the region.

4. Observing the lack of action on Congress Recommendation (202) 2006 on local and regional democracy in Bosnia and Herzegovina, the Congress notes with concern that:

a. the functioning of local self-government has been seriously affected by the political and institutional deadlock

at state level, which is preventing any decentralising reform in the country;

b. the constitutional guarantees governing the relations between the various levels of local self-government have not yet been put in place;

c. the lack of population census since 1992 is particularly problematic in a country where the entire political system is based on the ethnic principle;

d. the lack of clarity in the apportionment of powers between the entities, cantons and municipalities persists;

e. the level of financial autonomy of local authorities in Bosnia and Herzegovina is relatively low. Local authority finance depends on the redistribution of VAT, the existing mechanisms for which are ineffective;

f. there is still no legal framework guaranteeing municipal property, which affects the calculation of the local revenue base;

g. the great fragmentation of the territory of Bosnia and Herzegovina means that some municipalities are unable to exercise their powers;

h. inter-municipal co-operation exists in very limited form even if some initiatives seem to be developed in this direction;

i. the existing legal framework does not take account of the special status of Sarajevo and its specific powers and responsibilities as the capital of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina;

j. the city of Banja Luka, which operates as the *de facto* capital of the Republika Srpska, does not have a special status;

k. with regard to the Statute of the City of Mostar, the inequality in electoral rights in the municipal council is a breach of Article 3 of the European Charter of Local Self-Government, a point which was also noted by the Commission européenne pour la démocratie par le droit (Venice Commission) in Opinion No. 594/2010 of 16 October 2010. Moreover, the Constitutional Court of the Federation of Bosnia and Herzegovina has declared the Statute of the City of Mostar unconstitutional.

5. In the light of the above, the Congress recommends that the Committee of Ministers invite the authorities of Bosnia and Herzegovina to:

a. urge the entities of Bosnia and Herzegovina to draw up reform plans on decentralisation and practical implementation of the principles set out in the European Charter of Local Self-Government;

b. revise the State Constitution in accordance with Opinion No. 308/2004 of the Venice Commission adopted on 12 March 2005 and insert a reference to the principle of local self-government in the Constitution;

c. ensure implementation of the Law on the census of population, households and housing units in Bosnia and Herzegovina and give political, administrative and financial support to the preparation and organisation of the census, in order to draw up and implement effective public policies at local authority level;

d. review the legislation on local self-government within the entities, cantons and municipalities with a view to ensuring clear apportionment of the powers of local authorities;

e. allocate to local authorities sufficient financial resources commensurate with their powers and responsibilities, in particular by revising the existing legal provisions on financial equalisation;

f. adopt a legal framework recognising municipal property;

g. promote inter-municipal co-operation and the joint delivery of certain public services;

h. amend the Constitution of the Federation of Bosnia and Herzegovina and that of the Canton of Sarajevo in order to extend the area of powers specific to the capital city of Sarajevo and increase resources to a level commensurate with the powers assigned in the light of Congress Recommendation 219 (2007) on the status of capital cities;

i. continue the ongoing discussion to revise the Constitution of the Republika Srpska in order to grant a special status to the city of Banja Luka in Republika Srpska and assign it appropriate powers and resources;

j. revise without delay the Statute of the city of Mostar and the Electoral Law of the Federation of Bosnia and Herzegovina so as to bring them into line with Article 3 of the European Charter of Local Self-Government;

k. consider signing and then ratifying 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;

l. call on the expertise and assistance of the Congress in drawing up, in co-operation with all the relevant stakeholders, any reform programmes aimed at increasing decentralisation in line with the European Charter of Local Self-Government.

Debated and adopted by the Congress on 21 March 2011, 2nd Sitting (see document CG(22)12 explanatory memorandum), Rapporteurs: B. Hirs, Switzerland (L, ILDG), and J.-M. Belliard, France (R, EPP/CD).