

**34<sup>th</sup> SESSION**

## Local democracy in the Republic of San Marino

Recommendation 418 (2018)<sup>1</sup>

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(2015) 9 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(2015) 9 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.* Chapter XVII of the Rules and Procedures of the Congress on the organisation of the monitoring procedures;

*d.* Recommendation 63 (1999) on local democracy in the Republic of San Marino;

*e.* the present explanatory memorandum on local democracy in San Marino drawn up by Harald Bergmann, Netherlands (L, ILDG) and Gunnar Axel Axelsson, Iceland (R, SOC), rapporteurs, following a visit to the country from 13 to 14 June 2017.

2. With regard to the Republic of San Marino:

*a.* It joined the Council of Europe on 16 November 1988. It signed the European Charter of Local Self-Government (hereinafter “the Charter”) on 16 May 2013 and ratified it on 29 October 2013 with the exception of paragraphs 3 and 8 of Article 9 of the Charter;

*b.* When ratifying the Charter, it made an interpretative declaration with regard to Article 9 of the Charter, which reads as follows:

“The Republic of San Marino maintains that Article 9 of the Charter must be interpreted as an article establishing a general principle of financial autonomy, according to which local authorities are entitled to freely dispose, in the framework of the national economic policy, of the resources allocated to them for the exercise of their powers”;

*c.* The Charter entered into force in San Marino on 1 February 2014;

*d.* It 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);

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<sup>1</sup> Debated and adopted by the Congress on 28 March 2018, 2nd sitting (see Document [CG34\(2018\)17](#), explanatory memorandum), co-rapporteurs: Gunnar Axel AXELSSON, Iceland (L, SOC) and Harald BERGMANN, Netherlands (L, ILDG).

e. The Monitoring Committee decided to monitor the situation of local democracy in the light of the Charter and instructed Mr Harald Bergmann and Mr Gunnar Axel Axelsson, as rapporteurs, to draw up and submit to the Congress a report on local democracy in San Marino<sup>2</sup>;

f. The Congress delegation carried out a monitoring visit from 13 to 14 June 2017. During the visit the delegation met mayors and municipal councillors, representatives of the government and other public institutions of San Marino. The detailed programme of the visit is appended to the present report;

g. The rapporteurs wish to thank the Permanent Representation of San Marino to the Council of Europe, the Sammarinese delegation to the Congress and all the interlocutors met during the visit for their valuable co-operation, availability and for the valuable information they provided.

3. The Congress notes with satisfaction:

a. the launching of a reform process aimed at bringing local self-government in San Marino in line with the principles and requirements of the Charter;

b. the recognition of the legal personality of the township councils (Giunte di Castello) and of their right to recourse to judicial remedies, and in accordance with Article 11 of the Charter;

c. the establishing of the joint session of township representatives (consulta delle Giunte).

4. The Congress expresses its concern with regard to:

a. limited competences and decision-making powers conferred to municipalities that hinders their ability to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population (Article 3.1) due to the concentration of nearly all public responsibilities at the level of the state (Article 4.3);

b. the absence of autonomy of local authorities to exercise their competences (Article 4.2) which are not full and exclusive (Article 4.4.);

c. the ineffective implementation of legally established consultation mechanisms and procedures (Articles 4.6, 9.6);

d. inadequate financial resources available to local authorities for exercising their powers;

e. the lack of own professional staff of local authorities (Article 6) to allow for effective management of local affairs;

f. the absence of the explicit recognition of the principle of local self-government at the constitutional level.

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

a. allocate a substantial share of public affairs to the responsibility of local authorities in line with the principle of subsidiarity and ensure that local authorities dispose of the necessary legal and administrative means, property and finances to regulate and manage it;

b. clarify the areas where the townships will have full and exclusive powers and give them full discretion to exercise their initiatives with regard to any matter within their competences;

c. ensure proper implementation of consultation procedures and mechanisms in practice to permit effective consultations with local authorities, in due time and in an appropriate way on all matters that directly concern them;

d. revise the financial basis of the functioning of local self-government so as to endow local authorities with adequate financial resources which should be commensurate with their responsibilities;

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<sup>2</sup> The rapporteurs were assisted by Dr Nikolaos-Komninos CHLEPAS, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat.

- e. promote the employment of professional staff in municipalities;
  - f. establish, in close consultation with townships, a clear time-table and pursue the reform process of local self-government in San Marino in line with the principles of the Charter;
  - g. enshrine the principle of local self-government at the constitutional level in order to strengthen the position of local government in line with the spirit of the Charter;
  - h. consider signing and ratifying 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).
6. The Congress calls on the Committee of Ministers to take account of this recommendation on local democracy in San Marino and the accompanying explanatory memorandum in its activities relating to this member State.