

36th SESSION

Local and regional democracy in the Republic of Moldova

Recommendation 436 (2019)¹

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

a. Article 2, paragraph 1.b, of the Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the 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 monitoring procedures;

d. Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

e. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

f. Congress Resolution 420 (2017) on “Local democracy in the Republic of Moldova: clarification of the conditions surrounding the suspension of the mayor of Chişinău” and Recommendation 411 (2018) on “the situation of local elected representatives in the Republic of Moldova”

g. The appended explanatory memorandum on local and regional democracy in the Republic of Moldova.

2. The Congress points out that:

a. The Republic of Moldova acceded to the Council of Europe on 13 July 1995. It signed the European Charter of Local Self-Government (ETS No. 122, “the Charter”) on 2 May 1996 and ratified it on 2 October 1997 in full. The Charter came into force in respect of the Republic of Moldova on 1 February 1998;

b. The Republic of Moldova 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 Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in the Republic of Moldova. It instructed the co-rapporteurs on local and regional democracy Gunn Marit HELGESEN (Norway, R, EPP/CCE) and Marc COOLS (Belgium, L, ILDG), with the task of preparing and submitting to the Congress a report on local and regional democracy in the Republic of Moldova. The delegation was assisted by Prof. Angel MORENO MOLINA, Chair of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

¹ Debated and adopted by the Congress on 4 April 2019, 3rd sitting (see Document CG36(2019)15, explanatory memorandum), corapporteurs: Marc COOLS, Belgium (L, ILDG) and Gunn Marit HELGESEN, Norway (R, EPP/CCE).

d. The monitoring visit took place from 12 to 15 of June 2018. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to this document;

e. The co-rapporteurs wish to thank the Permanent Representation of the Republic of Moldova to the Council of Europe and all those whom they met during the visit.

3. The Congress notes with satisfaction that in the Republic of Moldova:

a. The principle of local self-government is explicitly recognised in the Constitution and in relevant legislation;

b. efforts have been made towards the full ratification of the Charter as well as a comprehensive change of the domestic legal order aimed at the inception of an autonomous local level of government;

c. the Charter is considered as a binding and operational set of rules, and the case law of the Constitutional Court ensures its applicability. Moreover, since 2016 every local authority has had the right to litigate in the Constitutional Court to protect local autonomy;

d. the present arrangements for the Autonomous Territorial Unit (ATU) of Gagauzia represent a workable political compromise between Chişinău and Comrat that is working well in general terms despite some points of tension and reconciles the unitary nature of the country with the aspirations for autonomy, devolution and self-determination of the Gagauzian people.

4. The Congress expresses its concerns on the following issues:

a. The National Strategy of Decentralisation, and the Roadmap for implementation of Recommendation 322 (2012) co-signed by the Congress of the Council of Europe and the Government of the Republic of Moldova, has been implemented only to a minor extent and the level of local autonomy seems to be eroded by a trend towards re-centralisation; furthermore Congress Recommendations 179 (2005), 322 (2012) and 411 (2018) have not been fully implemented;

b. Local authorities' financial autonomy is very limited and their finances are extremely poor both in terms of the proportion of own revenues in local budgets and of the share of local spending in total public sector expenditure. Local authorities clearly depend on State transfers and subsidies;

c. The local fiscal system is very weak. The lack of appropriate delimitation of municipal land from private or state property makes it impossible to evaluate the land units for tax purposes and causes a loss of potential local revenues;

d. In many cases, the law attributes new competences to local authorities without providing for new and adequate financial resources;

e. Local authorities do not enjoy full discretion to exercise their actions with regard to any matter which is neither excluded from their competences nor assigned to any other authority;

f. The lack of precision of the grounds to activate the mechanism of recall referendum deteriorates the conditions of office of local elected representatives and entails a serious dysfunction of local democracy as mayors work under the permanent threat of a revocation referendum;

g. Local authorities are not autonomous in the management of their human resources; they cannot recruit high-quality staff and provide for adequate training opportunities, salaries or career prospects;

h. The remuneration of mayors is far from being decent or sufficient which deters young and qualified people from engaging in local politics;

i. The State intervenes in local affairs through a supervision of local authorities which seems to be very invasive, frequent and much more discretionary than the law would normally allow for;

j. There are no fruitful and transparent consultation mechanisms no dialogue between the central government and the local authorities either on financial issues or on any other matter which is of interest to the latter;

k. The situation with the position of the Mayor of Chişinău is unsatisfactory: since May 2017 the capital city has been run by acting mayors and the mayoral elections carried out on 3 June 2018 have been declared null on unclear and controversial grounds, despite an overall positive assessment of the said elections by international observers. The elected candidate has thus been prevented from starting his mandate;

l. The political context for the exercise of mayoral functions is negatively affected by the intensive practice of bringing criminal prosecutions against mayors and other local representatives (*dossar penale*). Some of these criminal charges seem to be brought for unreasonable or insignificant reasons, which sometimes are connected with the lack of resources for local authorities to discharge their competences.

5. In light of the above, the Congress requests that the Committee of Ministers invite the authorities of the Republic of Moldova to:

a. get back on the path to decentralisation through appropriate and full implementation of all previous Congress recommendations: 179 (2005), 322 (2012) and 411 (2018) as well as through the devolution of competences to the local level and speed up the process of meeting the objectives approved in the National Strategy of Decentralisation and other relevant policies;

b. allocate sufficient financial resources to local authorities, in line with the principle that the resources should match the functions;

c. increase fiscal capacity of local authorities by enabling them to establish local taxes and to determine their rate and by clarifying the delimitation of municipal lands to allow their re-evaluation for tax purposes;

d. revise and clarify the system of local competences, in order, *inter alia*, to avoid situations of overlap between local and central competences, and to ensure concomitant finances to local authorities;

e. allow local authorities to have more discretion in adapting the exercise of their tasks to local conditions;

f. adopt the necessary legal and regulatory arrangements to avoid the possible distorting consequences of the application of local recall referendums in local political life; and in the meantime, revise the legal provisions regulating the grounds for calling a local recall referendum (Article 177.2 of the Electoral Code), in order to provide for more legal certainty and to reduce the scope of discretionary decisions in triggering such popular consultations;

g. increase the managerial capacity of local authorities, by giving them more freedom and flexibility in the management of their human resources, so that the local authorities could offer training opportunities and adapt and upgrade the remunerations of their own staff members, as well as their career prospects;

h. raise the wages of mayors and district council presidents in order to offer a set of remunerations which are in proportion with the importance of their responsibilities;

i. make sure that the supervision over the acts of local authorities is proportional to the importance of the interests that it is intended to protect and is limited to controls of legality and refrain from the expediency controls over the local authorities' actions in the field of their own competences;

j. reinstate a fair consultation process with local authorities and political dialogue, in order to come to an agreement on the planned measures which may affect the interests of local authorities;

k. remedy in the shortest possible time the situation of the governance of the capital city of Chişinău in order to ensure the stability of the mayoral office in between the local elections and prevent such cases where non-elected acting mayors are appointed;

l. find a more appropriate balance between the fight against corruption and the requirements of local democracy, so that the bringing of criminal charges against local elected representatives does not disrupt local political life, and refrain from exercising any type of pressure against local elected representatives;

m. 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) in the near future.