

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Resolution 161 (2003)¹ on the draft European charter of regional self-government: progress of work for its adoption as an international convention

The Congress, in response to a proposal from the Chamber of Regions,

1. Having regard to its Recommendation 34 (1997), in which it invites the Committee of Ministers to adopt the draft European charter of regional self-government as an international agreement;
2. Recalling Recommendation 1349 (1997) of the Parliamentary Assembly, its Resolution 146 (2002) and the opinion of 13 December 2000 of the Committee of the Regions of the European Union, all of which support rapid adoption of the charter in the form of a convention;
3. Having examined the report by Mr Peter Rabe (Germany), the rapporteur, which provides up-to-date information on current intergovernmental discussions concerning the draft European charter of regional self-government;
4. Notes with satisfaction that:
 - a. the thirteenth Conference of European Ministers responsible for Local and Regional Government (Helsinki, 27 and 28 June 2002) focused on regional self-government in Europe;
 - b. at that conference, the ministers held two working sessions, one devoted to European models and principles, the other to detailed examination of the texts prepared on this question by the Council of Europe's Steering Committee on Local and Regional Democracy (CDLR);
 - c. at the end of the first working session, the ministers held a colloquy with the Congress representatives, which provided a further opportunity to discuss the nature of the legal instrument on regional self-government which the Committee of Ministers is to adopt;
 - d. at the second working session, it was proposed that any convention on regional self-government should allow states wishing to do so to limit themselves, in the case of regional institutions, to the legal guarantees contained in the European Charter of Local Self-Government;
 - e. the final declaration of the conference² approves principles and a number of points concerning the utility and effectiveness of regional self-government, which were accepted by all the participants, and lists the issues that any

legal instrument on regional self-government must cover in order to be accepted by the member states;

f. in response to the Committee of Ministers' request for indications concerning the nature of the instrument, the ministers declared that a Council of Europe instrument on regional self-government should:

- i. be based on the core concepts and principles already drawn up by the CDLR;³
- ii. stipulate expressly that every state has the right to choose whether to establish regional authorities or not;
- iii. provide member states with a degree of choice, in order to take account of specific characteristics of their regional self-government systems;
- iv. ensure harmonious co-existence with the European Charter of Local Self-Government;

g. the final declaration of the conference recommends, in paragraph 21, that the Committee of Ministers instruct the CDLR to prepare draft legal instruments of different types, taking account of proposals and the developing experience of member states, and addressing the need for an appropriate relationship with the European Charter of Local Self-Government;

5. Welcomes the fact that the Committee of Ministers has accordingly instructed the CDLR to prepare legal instruments of different types on regional self-government;⁴ the CDLR will, in this work:

- a. take account of the Helsinki Declaration on Regional Self-Government as a whole;
- b. bear in mind that "legal instruments of different types" cover conventions and recommendations;
- c. base itself on the guiding principles laid down at the above conference;
- d. take account of the developing experience of member states;

6. Expresses its appreciation of the fact that, at its thirtieth meeting (Strasbourg, 25 and 26 November 2002), the CDLR asked the Committee of Experts on the Framework and Structure of Local and Regional Government (LR-FS) to help it to discharge the terms of reference given it by the Committee of Ministers, and specifically to discuss and prepare the first legal instruments of different kinds on regional self-government;

7. Takes note of the first draft legal instruments prepared by the Committee of Experts, as examined by the CDLR at its thirty-first meeting (Strasbourg, 12 to 15 May 2003);

8. Is resolved to continue following the work done by the CDLR, so that the final draft of the European Convention on Regional Self-Government is based as far as possible on the experiences of regional entities within the member states and can be finally accepted by the Committee of Ministers and opened for signature by the member states;

9. In this connection, opposes again the adoption of a recommendation on regional self-government in Europe. Such a text could create an institutional imbalance in European law, by establishing an international legal hierarchy between local and regional authorities;

10. With this in mind, concerning the proposal on the adoption of a European convention on regional self-government, referred to in paragraph 4.d above and in the Committee of Ministers' document on the Helsinki Conference:⁵

a. considers that this is a legal compromise which might contribute to current intergovernmental discussions, and so facilitate acceptance of a European convention on regional self-government, alongside the European Charter of Local Self-Government, which is already in force;

b. recognises that the insertion in the new convention on regional self-government of a provision allowing states wishing to do so to limit themselves, in the case of regional institutions, to the legal guarantees contained in the European Charter of Local Self-Government, meets the criticisms voiced by some states;

c. points out that this solution is made possible by Article 13 of the European Charter of Local Self-Government, which stipulates that: "[...], each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.";

d. considers that on the basis of the above article and the provision inserted in the future European convention on regional self-government, the fruitful harmonisation between the convention and the European Charter of Local Self-Government, rightly referred to by certain national delegations at the Helsinki Conference⁶ would be guaranteed;

e. is convinced that combined application of the provision referred to in paragraph 10.b above and Article 13 of the Charter would make it possible to satisfy:

i. states wishing to limit themselves, in the case of regional institutions, to the legal guarantees contained in the European Charter of Local Self-Government;

ii. states wishing, in the case of regional institutions, to have specific international guarantees, enshrined in a

European charter of regional self-government, taking the form of a convention;

f. under this compromise solution, Council of Europe states wishing to develop regional democracy in their territory on the basis of international law, should have alternative options for their regional institutions, namely:

i. ratification of the European Charter of Local Self-Government (under Article 13);

ii. ratification of the new European convention on regional self-government;

iii. ratification of the European Charter of Local Self-Government for certain regions and ratification of the new convention on regional self-government for others, according to their specific status; if appropriate, certain other regions could be excluded from the scope of both instruments;

11. Hopes that, in discussing the future EU Constitutional Treaty, the member states will take account of the proposals contained in this resolution;

12. Decides to consider these questions further at its next Institutional Session (Strasbourg, 24 to 26 November 2003) and instructs its Bureau, in conjunction with the Institutional Committee of the Chamber of Regions, to continue to follow the intergovernmental discussions referred to in this resolution;

13. Invites its members and its national delegations to ask their respective governments to support the adoption of a European charter of regional self-government in the form of a convention, by taking into account the proposals contained in the present resolution.

1. Debated and approved by the Chamber of Regions on 20 May 2003 and adopted by the Standing Committee of the Congress on 22 May 2003 (see Document CPR (10) 2, draft resolution presented by Mr P. Rabe, rapporteur).

2. Helsinki Conference Document MCL-13 (2002) 8 final

3. Helsinki Conference Document MCL-13 (2002) 3.

4. Decision No. CM/850/10102002.

5. CM(2002)125 of 21 August 2002.

6. See, in particular, paragraph 18 of the document prepared by the United Kingdom delegation at the Helsinki Conference and the view expressed by the French delegation that the principles of "local self-government" within the meaning of the European Charter of Local Self-Government, apply equally to all territorial authorities.