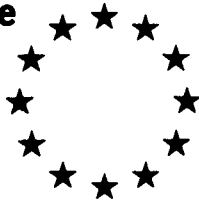


Council of Europe
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FOURTH SESSION

(Strasbourg, 3-5 June 1997)

**"FEDERALISM, REGIONALISM,
LOCAL AUTONOMY AND MINORITIES"**

Rapporteur: Mr G. Martini (Italy)

EXPLANATORY MEMORANDUM

On 24/26 October 1996, the Congress of Local and Regional Authorities, in co-operation with the Friuli-Venezia-Giulia Autonomous Region, organised a Conference on "Federalism, Regionalism, Local Autonomy and Minorities" at Cividale del Friuli (Italy).

In so doing, the Council of Europe and the Congress (CLRAE) were following up an activity which, in the past, had already dealt with issues concerning minorities and human rights. Reference need only be made to the European Charter for Regional or Minority Languages (1992), the Framework Convention for the Protection of National Minorities (1995) and Parliamentary Assembly Recommendation 1201 (1993). More specifically, in 1992 the CLRAE adopted Resolution 232 which called for this Conference to be held to examine and assess local and regional experiments in Europe relating to the problems of minorities with a view to furthering their defence and promotion.

Mention should be made, inter alia, of the United Nations and OSCE texts and the European Parliament's initiative on central Europe which addressed these important issues on a number of occasions. Indeed the document drawn up for the Second European Economic Assembly (to be held in Graz in June 1997 by the European Conference of Churches **KEK** and the Council of European Episcopalian Conferences **CCEE**) expressly calls on the Council of Europe and other international institutions to promote peace, justice and reconciliation and explicitly refers to the rights of minorities.

The final Declaration of the Cividale Conference whose undoubted success is confirmed by the participation and the quality of the reports and statements made during the debates, is appended to this report, thus permitting a more detailed assessment of the participants' conclusions and proposals. The introductory report which placed the problems of minorities in their essential political, historical and cultural context, in constant relation with the development of local and regional authorities and the institutional structures of basic democracy, was followed by two reports. The first, mainly legal in nature, concerned the promotion and protection of the rights of ethnic and linguistic minorities in the context of the Council of Europe. The second centred on two essential aspects of the organisation of the modern State, i.e., subsidiarity and autonomy.

The proceedings of the Conference are followed by the description and analysis of specific experiments in Finland (Swedish minority), in Alsace-Moselle (the existence of special statuses), in the Basque Provinces, in regions with a special status in Italy, in the countries of central and eastern Europe, in Hungary. A round table on "Minorities and transfrontier co-operation" preceded the presentation of the conclusions of the proceedings and the final Declaration.

At its Third Plenary Session the Congress of Local and Regional Authorities is now called upon to:

attach formal political importance to the contents and guidelines set out in the aforesaid Declaration;

adopt a resolution instructing the Working group responsible for the preparation of the Conference on "Regionalism, Federalism, Local Autonomy and Minorities" to draw up a draft

recommendation for submission to the Committee of Ministers, setting out the main guidelines.

The basis of the draft resolution is undoubtedly the text of the Declaration adopted at the end of the Cividale Conference with only seven abstentions. It represents a considerable and by no means easy attempt to sum up the wealth and variety of the contributions presented during the proceedings.

Nevertheless, in order to assign the Congress a role, obviously not only in taking note of all that happened at Cividale, but also in making an independent and authoritative assessment of the complex issues dealt with at the Conference, we think it desirable to outline below the main points which emerged during the proceedings.

After examining the vast number of documents and the numerous studies devoted to the minorities in recent years, we have chosen a number of guidelines for further thought, although many others are worthy of the attention of the members of the Congress. In any case, the working group which will consider these complex issues in depth and draw up a draft recommendation will be free to establish priorities for future work. The items chosen are as follows:

international regulations governing the rights of minorities;
cultural and ethical aspects;
relationship between minorities and the democratic system;
relationship between minorities and regional authorities.

1) International regulations governing the rights of minorities

It was on that basis that the Council of Europe decided to address the issue of minorities. Therefore, it is desirable to present a number of observations on the fact that whereas, in the past, minorities were the subject of the attention and initiative of the individual States concerned or at most of bilateral agreements between States, nowadays they are covered by international regulations. The problem of rights of minorities arose just after the First World War. The Allies had also intended to entrust an international organisation with a universal vocation, the League of Nations, with the task of ensuring the protection of European minorities. But that attempt failed. Many proposals were opposed by a number of countries. Only in this second post-war period was the initiative taken up again. It passed through various phases which cannot be described in detail here, but which found in the United Nations organisations, the OSCE, the Council of Europe and the European Union, institutions which, although very different in their nature and aims, seek to co-ordinate their efforts with a view to finding a coherent system to protect national minorities.

The 1975 Helsinki Final Act and all the other texts adopted at the subsequent meetings sought to codify a framework of international relations which went beyond international law as traditionally and formally understood. Although it is true that the Helsinki Final Act and the later

documents are not legal instruments in the formal sense of the term, but only political, it is fair to say that the changes which occurred in the international community and in international relations have contributed to create a code of behaviour for European (and also North American) States and peoples designed to identify important changes in legal institutions and structures. A number of scholars have expressly spoken of a new European "*jus gentium*".

It is therefore significant that the Congress of Local and Regional Authorities of the Council of Europe should have decided to address the individual aspects of the problem dealt with here and, at the aforesaid Cividale Conference, the situation as a whole.

2) Cultural and ethical aspects

In 1995, the Council of Europe and the Council for Cultural Co-operation, published in the Education and Culture series a collection of essays on "Difference and Culture in Europe". They make interesting reading which often relates to the problem of minorities because it concerns the difficult questions posed by the pluricultural society and thus, by interaction, between the different cultures. These essays also consider the conditions in which an intercultural society is possible.

This topic also has ethical implications because the presence of "otherness" often assumes the form of a threat to personal identity. We are then faced with the question: which specific morals can be assessed on a universal basis and, therefore, for example, can human rights be accepted as a criterion for judging our own values? Which morals can be assessed on the basis of the idea of the value of every human being as such?

We must seek to build a truly intercultural society whilst ensuring that the necessary pluriculturalism does not imply the eradication of all traditions, artificial adjustment, the relativisation of all values, the loss of the substance of a society which might thus threaten to destroy its identity. That is to say the danger is that pluriculturalism might lead to cosmopolitanism.

The debate could be pursued further. What counts is that local and regional elected representatives should become aware of this challenge which might face them on many occasions in connection with their relationship either with minorities or migratory flows.

We are committed to building a united Europe, as the guarantor of peace (the Council of Europe and the European Union, albeit with different aims, nature and structures, were set up to that end). At present we are witnessing the spread of ethnic conflicts and separatist trends. A culture of belonging prevails which seeks to highlight differences between human beings in respect of universalistic cultures which stress equality and solidarity. Looked at in that way, this observation may appear simplistic. In fact, the contradiction can also be regarded as a conflict between a false universalism, i.e., heteronomy and the positivity of rediscovered autonomy. Let us not forget that our age, which we have many reasons to deplore, is nevertheless also the "age of rights" on

which both Christian and lay ethics have agreed although on a different basis and with differing approaches.

The problems of minorities sometimes reveal a kind of obsession with identity which undermines the egalitarian approach of the "liberal" tradition and at other times an abstract egalitarianism which aims at a form of forced integration of the opposites.

Between these two extremes, i.e., assimilation which mistakenly reaffirms the values of equality (i.e., everybody is equal but... equal to me!) and recognition of and respect for difference, we find either the various solutions to the problems of minorities or our attitude towards immigrants (in respect of whom it has not yet been decided whether they can be regarded as minorities in the strict sense of the term). If we then look further to take in international relations we find that sometimes preference is given to universalistic criteria (often identified with the western project) and on other occasions "cultural relativisms" prevail which reject that which is considered as the expression of universalistic enlightenment.

Let us not delude ourselves: this opposition between cultures is often not only a phenomenon involving areas between themselves and remote from us because meeting/conflict clash in our towns and directly affect local and regional communities.

The problem of minorities, identities and "home areas", of their connection with the development of trends and the search for the essential unity in larger communities, is thus a cultural and ethical problem rather than a political and institutional one.

And above all, the question of minorities does not concern doctrinal and academic questions which are only legal and technical, it involves real men and women in their everyday lives, often with their sufferings and their hopes. That must never be forgotten in our laborious search for the most appropriate political, legal and institutional solutions.

3) Fundamental questions concerning relations between the democratic system and minorities

The problem of minorities is also a challenge to democratic systems. I shall not indulge in lengthy demonstrations, but confine myself to a few questions whilst stressing that the distinction between "pluralistic" and "plural" society must always be emphasised. The former is based on the conviction that diversity is a value, not only a de facto situation with which we have to live. Therefore it conflicts with any form of ghetto or marginalisation.

To what extent must pluralism, in a democratic State, be based on the representation and rights of groups (collective) or on individual rights? To what extent do specific institutional solutions threaten to produce a clash between these two principles in the context of a democratic policy? How will multinational democratic States be able to achieve sufficient legitimacy to make (democratic) decision-making processes possible and compatible with national and cultural

pluralism? What forms can this pluralism assume in democratic societies and what is the role of the institutions? It must be borne in mind that in multinational societies, the most obvious and natural rule of procedure in a democratic society, i.e., the principle of majority, is not sufficient to solve disputes.

Another question: how much equality and how much inequality is tolerable or even desirable in a pluralistic democratic society?

In addition to a common political "background" of rights of equal citizenship, one of the key factors which make democracy possible in multinational States is the capacity and determination of individuals belonging to a minority to assume multiple and complementary identities, that of the national State and that of the "nation" which does not aim at becoming a State. In that connection, it must be emphasised that federalism is the doctrine and practice of multiple and compatible loyalty.

The final Declaration of the Cividale Conference deals with a series of challenges resulting from the complex issue of minorities which directly concerns some of the essential relationships in our community life: relationships between identity and otherness, between the individual and society, between State, nation and citizenship, between individual and collective rights, between cultural, ethnic, religious and linguistic pluralism and between peaceful coexistence and security.

The Council of Europe and its Congress of Local and Regional Authorities claim the right and duty to deal with this matter for two essential reasons. The first is that minorities, their protection and promotion, although constituting a problem requiring measures and decisions at national level, concern the principles of democracy and of respect for human rights and are therefore important enough to concern Europe as a whole and justify international regulations.

The second reason is that when dealing with the problem of minorities we must also establish what political and legal structures of general and special local self-government make it possible to protect the various ethnic, cultural, religious and linguistic identities more effectively so as to guarantee respect for and the promotion (which should not only be passive tolerance) of human rights and those of peoples in the context of a democracy conceived of as a set of values and not merely as a pragmatic and methodological approach.

4) The relationship between minorities and self-government

In that connection, the issues which the Congress of Local and Regional Authorities and its Working Group have to address are numerous and very important. How can the recognition of a specific level and appropriate structures of local and regional self-government and the correct application of the principle of subsidiarity based on a co-operative and comprehensive vision of the community as a whole and of complex and growing interdependence provide satisfactory answers for bodies responsible for the protection and development of minorities? What forms of State? What new prospects can and must the European unification process open up for a lasting

solution to the problems of minorities, whilst overcoming the frequent (and often opportunistic) temptations to confine it to the national context?

A federal system often arouses considerable concern and hostility. Perhaps that is due to an incorrect interpretation of its nature which fosters the fear that it might lead to the collapse of State unity. But it is the alternative, provided that we are concerned with genuine federalism. From the outset, it is inspired by the principle of unity in diversity ("*E pluribus unum*" is inscribed on the national emblem of the United States of America) and therefore it might be good prerequisite for the solution of the matters with which we are concerned here.

The obstacle to be overcome is the survival of the temptation to build the nation-state, i.e., to make the State coincide with only one national and ethnic entity. Drawing up frontiers in accordance with ethnic criteria and dividing lines often paves the way for tragic conflicts: "ethnic cleansing" in the former Yugoslavia is one of the tragic and recent example. The increasing number of minorities in Europe is the outcome of the historic encounter between the nation-state and the diversity of the various populations and collective identities with which Europe is abundantly endowed. Paradoxically, the defence of the European identity calls for the conservation of European diversity.

Mention must be made of other aspects which should be considered in greater depth and, since I cannot do so in this report for obvious reasons of space, they will be referred to the appropriate working group together with the many issues referred to above. However the Congress will provide the appropriate guidelines:

the relationship between territorial self-government and cultural autonomy (not territorial);
 the contribution of transfrontier co-operation to the solution of the problems of minorities;
 the relationship between "immigrants" and minorities already referred to;
 the repercussion which the various electoral systems may also have in that context;
 co-operation between territorial authorities, the school and educational systems.

5) Final considerations

Despite what has been said above about the creation of a new kind of European "*jus gentium*", there remains the problem of gradually overcoming the obvious limits of existing universal protection of human rights and the various international and European organisations concerned with such protection by giving their decisions the binding force of compulsory standards and effective guarantee.

The on-going trend must be pursued since it has prompted the States to commit themselves not only "not to act" (i.e., not to oppress minorities and to violate their rights) but also "to act" (i.e., to give positive support to their legitimate expectations and aspirations).

It should be remembered that the Vienna Document (1989) in the context of the CSCE (now

known as the OSCE) contains a chapter entitled "the human dimension of the CSCE". Its content, although the result of the attention paid to eastern Europe (in January 1989, the historic events which have changed the European situation had still not occurred) represented an important and general sign of a growing awareness of the need to establish a proper relationship between the individual and society and the citizen and the State in addition to an instrument which had contributed to overcome walls, divisions and arbitrary action.

The appointment of a High Commissioner for national minorities in Helsinki in July 1992 has greatly contributed to these results.

Mention should also be made of the Moscow Conference (1991) which also took place in the context of OSCE. It confirmed the impossibility of invoking the ban on interference in the domestic affairs of another State in respect of human rights and humanitarian matters. It is explicitly stated that commitments entered into in respect of the human dimension of the CSCE are matters which directly and legitimately concern all the participating States and do not exclusively involve the domestic affairs of the State concerned.

The Council of Europe has also sponsored two important initiatives: the European Commission for Democracy through Law (set up by the Council of Europe in 1990) and "Local Democracy embassies" in a number of towns and regions particularly affected by bloody ethnic and religious rivalries.

Nor should we forget the initiative concerning the struggle against racism, xenophobia, anti-semitism and intolerance which also fundamentally affects minorities. That initiative found a notable echo in the context of the European Union which proclaimed 1997 "European Year against Racism". The tasks of the Ombudsman will also have to be enhanced by creating this post where it does not yet exist.

The Council of Europe and its Congress of Local and Regional Authorities of Europe must also concern themselves with all these issues in future, together with other international and European organisations and institutions, by stepping up strict controls concerning the effective protection of minorities in the various member States and of institutions and procedures. Local and regional elected representatives, including those who are fortunately not directly faced with the problem of minorities, will be able to contribute significantly to the building of a democratic European society based on respect for human rights, the requirements of self-government, the values of interdependence and peaceful and more equitable coexistence. Apart from territorial authorities, we must never forget the need for adequate educational schemes to arouse the necessary and appropriate awareness of, and understanding for, developments which will probably become even more widespread in the future.

**FEDERALISM, REGIONALISM,
LOCAL AUTONOMY AND MINORITIES**

(Cividale del Friuli, 24-26 October 1996)

FINAL DECLARATION

1. The participants in the Conference on Federalism, Regionalism, Local Autonomy and Minorities, held by the Congress of Local and Regional Authorities of the Council of Europe (CLRAE) and the Friuli-Venezia-Giulia Autonomous Region in Cividale del Friuli (Italy) from 24 to 26 October 1996:
2. Wish to thank Friuli-Venezia-Giulia Autonomous Region most sincerely for its kind hospitality and the excellent organisation of the Conference;
3. Considering the texts of the United Nations, the OSCE, the Central European Initiative and the European Parliament concerning minorities;
4. Considering that the problem of linguistic and ethnic minorities, while demanding national action, has now become a problem of democracy and respect for human rights which therefore concerns Europe as a whole and thus warrants international regulation;
5. Considering that the CLRAE, in Resolution 232 (1992), called for this conference to be organised to consider examples of the involvement of minorities in local self-government in Europe with a view to drawing up appropriate recommendations;
6. Considering that, from the internal point of view of States, the legal forms of federalism, regionalism and local self-government actually merely amount to differing methods of applying the principle of subsidiarity, which the European Charter of Local Self-Government defines as meaning that "public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy";
7. Considering that neither international law in general nor the treaties dealing with the problem of minorities, in particular the two instruments adopted by the Council of Europe (the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities), guarantee minorities a genuine and universally recognised right to manage their own affairs in the areas where they live, even though Article 7.1 (b) of the Charter requires the Contracting Parties to respect the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not

constitute an obstacle to the promotion of such languages;

8. Considering, however, that certain bilateral treaties and many national constitutions do provide for some degree of local or regional self-government by minorities;

9. Considering also that Parliamentary Assembly Recommendation 1201 (1993) states that, in regions where they are in a majority, persons belonging to a national minority should have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the State;

10. Having considered examples of local or regional self-government enjoyed by minorities in Finland, Italy, Spain and certain central and east European countries;

11. Considering that, in accordance with the principles of the European Charter of Local Self-Government, self-government can be defined here as the right and the ability of local and regional authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population;

12. Whereas local and regional authorities can be focal points for debating and solving problems of minorities, coexistence, solidarity and mutual acceptance;

13. While recognising that ethnic criteria should not be the only grounds on which particular areas should be granted some degree of local or regional self-government, and that historical or cultural traditions and geographical or economic situations may also warrant the granting of special powers or responsibilities to autonomous authorities;

14. Believe, nevertheless, that under certain circumstances, for instance when there are high concentrations of persons belonging to a minority on the territory of a municipality, province or region, when certain historical traditions exist or when particular areas are culturally and linguistically homogenous, etc, local self-government within the geographical area concerned is a very effective means of helping to solve the problem of minorities while avoiding the development of separatist tendencies;

15. Considering that citizens' loyalty to the State is based on the respect of human rights and the principles of democracy;

16. Believe also that, in some cases, cultural autonomy, which is a crucial element of local or regional self-government by minorities in their own areas, may, under certain circumstances, be an alternative to such self-government or may add to it;

17. Declare that minorities' territorial self-government should not be limited to States having federal or regional structures, but is also possible and desirable in unitary States; moreover, it does not endanger the State's sovereignty and territorial integrity;

18. Stress the fact that the self-government enjoyed by minorities does not necessarily have to take the same form as that granted to local or regional authorities, but may - and, indeed, must - include more extensive responsibilities, particularly with regard to culture and language, which should be backed up by the necessary funding;

19. Recall that transfrontier cooperation can contribute to the peaceful settlement of national minority issues as emphasized in the declaration of heads of State and government adopted in Vienna on 18 October 1993;

20. Stress that national measures guaranteeing effective equality among all State citizens and the appropriate legislative protection of minorities are, in any case, a pre-requisite to minorities' territorial autonomy;

A. Recommend that the CLRAE draw up a draft recommendation to governments indicating:

- a. under what circumstances - for instance, ethnically homogenous areas, strong sense of belonging to a minority community, linguistic and cultural traditions that differ from those of the majority population, or the presence of different minority groups, etc - the relevant minorities should have the right to an appropriate form of self-government (municipal, provincial, regional), it being ensured that they continue fully to respect the territorial integrity of the state concerned and remain loyal to it;
- b. the powers which the autonomous authorities concerned should, as a rule, be granted, as well as the right of such authorities to cooperate and form consortia in conformity with article 10 of the European Charter of Local Self-Government;
- c. the means for ensuring that minorities' local and regional self-government actually help to integrate them into their national communities and European society as a whole, rather than isolating them from the latter;
- d. the criteria to be applied when defining the geographic limits of the autonomous authorities, where the concentration of the minority population justifies the establishment of such authorities;
- e. the need to consult, if appropriate through their representative organisations, the members of the minorities concerned, with regard to the granting, extension or any other modification of minority self-government at local or regional level in order to reach a consensus among all those concerned;
- f. the forms local self-government should take and the institutions it should involve, as well as the way they should operate, when geographical, economic, social or historical factors mean that the territory of the authority concerned is populated by groups from different ethnic, religious, linguistic and cultural backgrounds;

- g. ways and means of promoting transfrontier cooperation between local and regional authorities in whose territory a significant number of minority members is concentrated;

B. Also recommend that the CLRAE take account of this declaration when finalising the draft European Charter of Regional Self-Government.