

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 171 (2005)¹ on consultation of local authorities: implementation of the European Charter of Local Self-Government (Articles 4.6, 5, 9.6 and 10)

The Congress, bearing in mind the proposal of the Chamber of Local Authorities,

1. Considers that the right of local authorities to be consulted, which is enshrined in Articles 4.6, 5, 9.6 and 10 of the European Charter of Local Self-Government (hereinafter referred to as “the Charter”, is a fundamental principle of European legal and democratic practice, the aim of which is to contribute to good governance;
2. Believes that, in the interests of promoting good governance, consultation of local authorities has to be a required part of policy-making and administrative processes, enabling the wishes of local authorities to be known in good time and properly taken into account in the decisions of central and regional authorities;
3. Notes with satisfaction an increasing tendency for central bodies to consult local authorities appropriately in a large number of central and east European countries as part of consolidating democratic change;
4. Notes that in the majority of states, the mechanisms for consulting local authorities are based on legal procedures or on customary practice that is well established in the democratic and political relationship between the state and municipalities;
5. Notes that while in some countries consultation of local authorities is a general principle enshrined in law, in most states it is based on customary practice alone;
6. Welcomes the fact that the consultation process is gradually becoming an essential feature of political negotiation between the state and local authorities. In several states, in fact, the consultation process has moved towards a system of negotiation between the government and local authorities in which genuine institutional agreements on the development of local self-government and the application of the principle of subsidiarity are drawn up. This has enhanced the role of local authorities in the management of public affairs and democratic institutions;
7. Notes, however, that the process is almost always a mechanism for the exchange of information and views between the representatives of central government and local authorities and rarely takes the form of genuine political negotiation;
8. Also welcomes the fact that national and regional associations of local authorities play a very important part in the processes of safeguarding and advancing their common interests and carrying on institutional dialogue either with central government or with the regions;
9. Regrets that in some Caucasian countries there is still a long way to go before consultation of local authorities takes place on a regular basis and within a clearly defined institutional context;
10. Believes that local authorities must be consulted during the decision-making process on all matters directly affecting their interests, in particular economic and financial affairs, spatial planning, the environment, European affairs, local development, education and culture;
11. Observes that, except in the case of Azerbaijan – which requires special attention – it can be said that in all member states local authorities are consulted, to a greater or lesser degree, during the legislative process on matters that affect them;
12. Notes that in states where local authorities are consulted by the central (or federal)/regional government, there are three areas in which, generally speaking, formal or informal consultation and/or participation of local authorities is to be found: local-authority finance, local-authority responsibilities and changes to local-authority boundaries;
13. Observes that with regard to legislative, planning and decision-making processes (Article 4.6 of the Charter), local authorities are normally consulted through their national and regional associations (however, in respect of decisions concerning a specific local authority, it is the latter which is consulted);
14. Notes that as regards territorial organisation, the general rule is prior consultation of the local authorities concerned (Article 5 of the Charter);
15. Welcomes the fact that this principle has been adopted by the majority of countries with some exceptions;
16. Draws attention to the fact that not consulting local authorities and not having objective, compulsory rules on decision making in the sphere of finance can sometimes lead to informal systems in which political bias influences local-authority financing and grants and subsidies are arbitrarily allocated, contrary to the Charter;
17. Welcomes the fact that all countries recognise local authorities’ right of association at national level (Article 10 of the Charter) – in other words their right to belong to a national and/or regional association for the protection and promotion of their common interests;
18. Notes that, except in a very small number of countries, the concept of “appropriate consultation” has not yet given rise to specific case-law. (Nonetheless, it should be borne in mind that in several countries there is extensive case-law on the general legal effects of failure to consult local authorities on administrative and legislative matters),

19. Recommends that member states should:

- a.* enshrine local authorities' right of consultation in regional, national or federal law;
- b.* develop the consultation process into a system of negotiation between the government and national associations of local authorities;
- c.* formally recognise national and/or regional associations of local authorities as partners of regional, national or federal authorities in the consultation process;
- d.* set up a permanent consultation body on which national and local authorities would be represented (local authorities being represented by their national association);
- e.* support the development of national and regional associations of local authorities;
- f.* give systematic legal recognition to the right of local authority associations to become members of an international association of local and regional authorities;
- g.* systematically involve local authorities in consultation on important issues such as powers and responsibilities, fiscal decentralisation and the financial resources of the municipalities within a permanent institutional framework and periodically assess the effectiveness of these consultations;

20. Calls in particular on:

- a.* the authorities of Armenia, Azerbaijan, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Iceland, Latvia, Luxembourg, Malta, Norway, Romania, the Slovak Republic, Sweden, Turkey, Ukraine and the United Kingdom to introduce particular legislative provisions with a general requirement to consult local authorities at the different legislative stages;
- b.* the governments of the Council of Europe member states to consult local authorities at all stages concerning the financial resources allocated to them (Article 9.6 of the Charter);
- c.* the Azerbaijan authorities to speed up the process for setting up a national association of local authorities with the Council of Europe's assistance;
- d.* the Georgian authorities to support the development of the newly established national association and to make it an institutional partner in relations between central government and local authorities.

1. Debated and approved by the Chamber of Local Authorities on 1 June 2005 and adopted by the Standing Committee of the Congress on 2 June 2005 (see Document CPL (12) 5, draft recommendation presented by E. Calota (Romania, L, SOC), rapporteur).

