

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 201 (2006)¹ on local and regional democracy in Albania

The Congress,

1. Refers to:

a. Article 2, paragraph 1.*b.* of Statutory Resolution (2000) 1 on the Congress, which provides that one of the Congress's aims is "to submit proposals to the Committee of Ministers in order to promote local and regional democracy";

b. Article 2, paragraph 3, of Statutory Resolution (2000) 1 on the Congress, which provides 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. its Resolutions 31 (1996), 58 (1997) and 106 (2000) of the Congress, setting out guiding principles for drawing up such reports;

2. Bearing in mind the report on the situation of local and regional democracy in Albania, drawn up by the rapporteurs Guido Rhodio (Italy, EPP/CD, L) and Jean-Claude Van Cauwenberghe (Belgium, SOC, R), following two official visits to Albania (11-12 May 2005 and 10-12 April 2006), with the assistance of Professor John Loughlin, consultant (Ireland), member of the Group of Independent Experts on the European Charter of Local Self-Government, whom the Congress thanks for his contribution;

3. Recalls its Recommendation 28 (1997) and Resolution 45 (1997) on local and regional democracy in Albania;

4. Thanks all the governmental and parliamentary authorities, the elected representatives of the regions and municipalities of Albania, as well as the experts, NGOs and representatives of the international community in Albania for the information and documentation provided and the comments supplied during their meetings with the rapporteurs;

5. Wishes to bring to the attention of the Albanian authorities, the Committee of Ministers and Parliamentary Assembly of the Council of Europe the comments and recommendations presented below;

6. *With regard to the global reform process in the field of local and regional self-government and decentralisation:*

a. despite the expressed intention of an ambitious reform programme announced by the government formed after the

2005 general elections, acknowledges that, measured by reference to legislation actually passed and implemented, little has happened so far to reform the system of local and regional government in Albania;

b. welcomes the new government's determination to stamp out corruption and crime, to support better governance, transparency and citizen participation and to promote national economic development, but at the same time stresses that this should not be at the expense of the programme of decentralisation and of the principles enshrined in the European Charter of Local Self-Government (hereinafter "the Charter");

c. welcomes several positive achievements and projects in the field of decentralisation and encourages the Albanian governmental and parliamentary authorities to continue their efforts in the reforming process;

7. The Congress recommends that the Albanian authorities:

a. continue reforming and modernising the legislative basis of local and regional government in close consultation with the associations of Albanian municipalities, communes and regional councils and accelerate the reforms in the field of decentralisation;

b. consider the overall system of territorial organisation and in particular the number of regions and municipalities and begin a reform of the communal system through either the amalgamation of those small communes that are unable to perform the tasks required of them into larger units or through voluntary association. This reform should be carried out in conjunction with the reduction of the number of regions and in respect of constitutional provisions regarding consultation with the respective communities as a result of a democratic and participatory process and taking into account the co-ordination of territorial government units at all the levels;

c. review the laws passed previous to Law No. 8652 "on the Organisation and Functioning of Local Government" of 2000 with a view to bringing these laws into harmony with Law No. 8652 and draft the new laws according to the agenda defined in Law No. 8652;

d. institutionalise the consultation and participation of local and regional authorities in the decentralisation process;

e. consult within a reasonable time the Council of Europe and the Congress when preparing relevant draft legislation in the field of local and regional self-government;

f. as well as that main political parties, local authorities and civil society, find a consensus in order to treat decentralisation in Albania as a priority target;

8. *With regard to the current state of local and regional self-government and their compliance with the European Charter of Local Self-government:*

a. welcomes the considerable progress made in Albania with regard to building the constitutional and legislative framework for the implementation of the European Charter on Local Self-Government ratified by Albania in 2000;

b. notes however that the provisions of the Charter have not always been fully implemented;

c. recalls that the local authorities must have, as far as possible, full and exclusive responsibilities (Article 4.4 of the Charter) distributed between the state and the local and regional self-governing bodies, based on respect for the subsidiarity principle (Article 4.3 of the Charter);

9. The Congress recommends that the Albanian central authorities:

a. work with local and regional authorities on the gradual transfer of powers and the division of functions among different levels of local, regional and central government;

b. consider the decentralisation of the water supply and sewage system, defined by law as own function of the municipalities and communes, paying particular attention to the financial implications of the transfer of this function;

c. make the necessary arrangements to guarantee the practical implementation of the new legislation in the field of local and regional self-government and ensure that these texts are applied in the spirit of the European Charter of Local Self-Government;

d. replace the procedure of the passing of “normative acts” by normal procedures of decision making by adopting laws by the Parliament while respecting the principles enshrined in the European Charter of Local Self-Government;

10. *With regard to financial autonomy of local and regional authorities (Article 9 of the Charter):*

a. is convinced that financial autonomy on the part of local authorities is a vital component of local self-government and that genuine decentralisation including a large financial autonomy is the only means of guaranteeing the autonomy of action of local authorities from the central authorities;

b. welcomes the new fiscal package put into law in 2002 increasing local fiscal autonomy and representing a significant improvement in terms of the balance between central funding (including local discretion over these grants) and locally generated resources;

c. considers, however, that financial resources available to local authorities remain a substantial problem for local autonomy in Albania and that today the major part of local authorities, in particular small rural communes, do not have adequate financial resources (commensurate with their responsibilities) of which they may dispose freely;

d. notes a certain dependence upon central government grants and transfers rather than locally determined taxes and charges;

11. The Congress recommends that:

a. attention be paid to the discrepancy between the responsibilities allocated to local authorities and the financial resources necessary for carrying out these responsibilities in line with Article 9.1 of the European Charter of Local Self-Government;

b. there should be a greater percentage of local revenue from own resources, including regional taxes and fees, as well as an appropriate implementation of shared taxes as personal income tax and corporate profit tax;

c. there should be a clearer definition of central government grants with the emphasis on unconditional rather than conditional grants;

d. broad consultations with local authorities be conducted on the decision to halve the small business tax, in order to reconsider this decision, if necessary, and generally before the implementation of similar measures;

e. the financial and fiscal package be reviewed according to the recent changes which absorbed an important share of own local taxes such as small business tax, simplified profit tax and hotel tax, in order to ensure adequate financial resources of local authorities and efficient exercise of this fiscal competence at the local level;

12. *With regard to administrative supervision of local authorities (Article 8 of the Charter):*

a. considers that the long-standing weight of central supervision and control of local authorities has not yet been fully lifted and that there is still excessive interference on the part of the prefects in local and regional affairs, acting as an instrument of central government control rather than being an administrative support;

b. takes note of a conflict between the Albanian Government and the municipality of Tirana over several works in Tirana and in particular the construction of a *Zogu i Zi* flyover, and in this connection:

i. acknowledges that according to Albanian legislation, urban planning is one of the own competences of local authorities which, according to Article 4.4 of the Charter, “shall normally be full and exclusive”;

ii. stresses that it is outside the competence of the Congress to decide whether or not there had been any infringements of urban planning rules or to interfere to any extent in court procedures, in which no final decision has been taken so far;

iii. notes that the majority of the members of local authority territorial adjustment councils does not represent the municipality;

iv. regrets that, in practice, in cases like *Zogu i Zi* flyover, the Territorial Adjustment Council of Albania has the power to interfere in local decisions that go beyond the control of legality, in spite of the fact that, by law, it does not have this power and may only be the instance of the control of expediency if local interest does not fit with the Central Program of Urban Planning;

c. recalls that according to Article 8 of the Charter, the supervision of local authorities should aim only at ensuring compliance with the law and exclude any supervision of the expediency of actions that fall within local authorities’ own areas of responsibility and the principles of

subsidiarity and proportionality remain key aspects of any administrative supervision by higher-level authorities;

d. considers that the existing powers of the Albanian construction police to intervene, without court decision, in local authorities activities in the field of construction work and urban planning are in contradiction of European standards;

13. The Congress recommends that:

a. the Albanian authorities review the composition and functioning of the Territorial Adjustment Council of the Republic of Albania and local authority territorial adjustment councils with a view to bringing them into conformity with Articles 4.4 and 8 of the European Charter of Local Self-Government and Law No. 8652 “on the Organisation and Functioning of Local Government”;

b. the construction police be replaced by a planning inspectorate independent of the government in power whose task would be to control the implementation of technical standards on the territory and under the authority of local government;

c. the control of legality of decisions made by the Territorial Adjustment Council of the Republic of Albania and local territorial adjustment councils be given to the independent judiciary power;

d. any initiative to improve the Laws on Urban Planning and Construction Police should aim at making this legislation compatible with the provisions of the European Charter of Local Self-Government and Law No. 8652 “on the Organisation and Functioning of Local Government” of 2000;

e. central government refrain from interfering in local authority politics in such a way as to undermine the political autonomy of local authorities;

f. the prefectural system and the status of prefects be reviewed preventing political interference in local and regional affairs through the exercise of their supervisory function and that the role of the prefect be confined to a *posteriori* control of legality;

g. the respective roles of the prefect and the regional council be clarified in order to avoid overlap and that the regional and prefectural administrations be clearly separated;

14. *With regard to regional self-government:*

a. welcomes the creation of 12 regions in 2000 and acknowledges, however, that there are some gaps in the definition of their role and functions in the political and administrative system;

b. regrets that the regions lack financial and administrative resources as well as political legitimacy and are not well known to the general public;

15. The Congress recommends that:

a. consideration be given to reducing the number of regions to position them at an appropriate, effective level, as part of a programme of territorial reorganisation and strengthen their institutional capacity;

b. the regions be given real competences, clearly defined by law and in tune with the country’s realities/needs, including wider powers of social and economic development, public transport, cultural affairs, urban and rural policy co-ordination and environmental concern;

c. in line with recommendations of the Congress of Local and Regional Authorities of the Council of Europe, Albania move towards a system of direct democratic election of regional councils under a system of proportional representation;

d. as part of territorial restructuring of the regions, attention be paid to providing regional councils with sufficient resources, including own funds raised through regional taxes and fees;

e. adoption of a new law devoted to the regions containing all these elements be envisaged;

f. prior consultation on these matters with the regional authorities and their associations be established;

g. there should be a separation of the regional assembly and the executive with the latter either directly or indirectly elected;

h. consideration be given to improving Tirana’s legal status, its integration in the system of regional government and the relationship between the Municipality of Tirana and the Region of Tirana, by recognising Tirana as a city-region or giving it region equivalent status. This would constitute a solution in the interest of co-operation between the capital and the region, while allowing for a possible extension of the city boundaries;

16. *With regard to the electoral system and forthcoming local elections*, notes that several electoral issues (voters list, electoral commissions, etc.) were the subject of a major crisis between majority and opposition parties during the summer of 2006 and welcomes the fact that the ruling party and the opposition managed to reach political agreement on most of the electoral issues at the end of August 2006;

17. The Congress recommends that:

a. the mandate of local and regional **councillors and mayors** should be for a minimum of four years;

b. the date of local elections be fixed as soon as possible, according to the schedule prescribed in the Constitution and in the Electoral Code and sufficiently in advance in order to ensure appropriate preparation for elections and a fair electoral campaign in accordance with the international standards for free and fair elections;

18. The Congress invites the Albanian Government to develop interregional and transfrontier co-operation, and with this in mind encourages Albania to take part in full in

the Adriatic euroregion and to support intergovernmental implication in the activities of this euroregion;

19. The Congress consequently invites:

a. the Committee of Ministers to transmit this recommendation and its explanatory memorandum to the Albanian authorities;

b. the Albanian authorities responsible for local and regional self-government:

i. to submit to the President of the Congress, by 1 December 2008, a written report setting out in detail the measures taken to implement the recommendation;

ii. to appoint a senior representative of the government to present, at a session of the Congress before that date an interim report on the measures taken and/or planned in order to implement the recommendation;

c. the Parliamentary Assembly to take account of the foregoing comments and recommendations in monitoring the honouring of commitments entered into by Albania.

1. Debated and adopted by the Standing Committee of the Congress on 14 November 2006 (see Document CG(13)29, draft recommendation presented by J.-C. Van Cauwenberghe (Belgium, R, SOC), and on behalf of G. Rhodio (Italy, L, EPP/CD) rapporteurs).