

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 202 (2006)¹ on local and regional democracy in Bosnia and Herzegovina

The Congress,

1. Recalling:

a. Statutory Resolution (2000) 1 of the Committee of Ministers by virtue of which 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;

b. the interim report on local and regional democracy in Bosnia and Herzegovina prepared by Mr Haegi and Mr Martini and adopted by the Congress Standing Committee on 2 March 2000;

c. Congress Recommendation 103 (2001) on local and regional democracy in Bosnia and Herzegovina and Explanatory Memorandum CG (8) 23 Part II presented by the rapporteurs Mr Newbury and Mr Kittelmann, adopted by the Standing Committee of the Congress on 9 November 2001;

d. the Strategy Paper of the Committee of Ministers' Rapporteur Group on Democracy on "Council of Europe co-operation with Bosnia and Herzegovina" GR-DEM(2006)4 of 20 December 2005;

e. the decision of the Institutional Committee of the Congress of 15 April 2005 to draft a further report on Bosnia and Herzegovina with a view to monitoring the status of local and regional democracy in the country after the first years of application of the European Charter of Local Self-Government (the Charter entered into force on 1 November 2002);

f. the recent visits of the rapporteurs, Mr Newbury (UK) and Mr Behr (Germany) in Bosnia and Herzegovina and their meetings with representatives of state, Entities, cantons, local authorities and municipal associations;

g. Resolution 1513 (2006) on "Constitutional reform in Bosnia and Herzegovina" adopted by the Parliamentary Assembly on 29 June 2006 (21st Sitting);

2. Considering that:

a. the European Charter of Local Self-Government has been signed and ratified by the state of Bosnia and Herzegovina and entered into force on 1 November 2002;

b. the institutional structure of Bosnia and Herzegovina and its Entities – the Federation of Bosnia and Herzegovina and the Republika Srpska – is very complex, shaped by the specific requirements of multi-ethnicity;

c. legislation on local self-government in the Republika Srpska and in the federation is on the whole compatible with the principles of the European Charter of Local Self-Government, but a number of problems persist;

3. Notes the following main problems in the functioning of local and regional democracy in Bosnia and Herzegovina:

a. a clear constitutional guarantee of local self-government at state level binding all tiers of public authorities still does not exist;

b. the central state of Bosnia and Herzegovina has no explicit responsibility to rule in the field of local self-government and thus to implement its obligation deriving from the ratification of the European Charter of Local Self-Government;

c. in the federation, a clear constitutional basis for legislating in the field of local self-government is still missing;

d. although the Entity laws on local self-government are on the whole compatible with the principles of the European Charter of Local Self-Government many of their provisions are very vague and require concretisation through subsequent laws. Already existing subordinate laws are not always in accordance with the Entity's laws on local self-government;

e. municipalities continue to be strongly dependent upon financial transfers from higher level authorities. Legally binding distribution formulae for the recently introduced value added tax (VAT) have not yet been adopted. Genuine local tax revenues are extremely low in both Entities particularly after the recent abolition of the local sales taxes;

f. the small size of some municipalities, often caused by the division of municipalities following the ethnic conflict, does not allow for appropriate administration of local self-government;

g. the high complexity of administrative structures creates an obstacle to efficient management of local self-government. Particularly in the federation, the powers of the additional administrative level of the cantons in the field of local self-government concerning supervision of local authorities and distribution of financial means require enormous financial and administrative resources and raise doubts on the efficiency and neutrality of administrative decisions;

h. the horizontal lines of communication linking the various levels of authorities of the two Entities are weak and the co-operation between municipalities with a different ethnic composition still progresses slowly. Communication problems between Federation cantons with

different ethnic majorities persist as well. The associations of municipalities start to co-operate, however, a close co-operation or even unification of the associations has still not taken place;

i. concrete legal provisions on municipal property have not yet been adopted in either of the Entities;

j. decisions concerning public affairs often continue to be based on ethnic criteria;

k. the following Council of Europe conventions have been signed, but not yet ratified, by Bosnia and Herzegovina:

i. the European Framework Convention on Transfrontier Co-operation;

ii. the European Charter for Regional or Minority Languages;

4. Recommends that:

to all authorities:

a. constitutional, legislative and administrative policies at all levels should aim at simplification of the public administrative structure;

b. constitutional and legislative policies at all levels should be targeted at reducing and finally eliminating the part of ethnic criteria in the exercise of political rights, taking into account, however, the temporarily necessary rules for the protection of minorities;

to the state of Bosnia and Herzegovina:

c. given the international responsibility of Bosnia and Herzegovina for the implementation of the European Charter of Local Self-Government, the state of Bosnia and Herzegovina should legislate for a clear constitutional guarantee of local self-government binding all tiers of public authorities;

d. the state of Bosnia and Herzegovina should, in the framework of its internal procedures, ratify the following Council of Europe conventions and ensure their binding force to all tiers of public authorities:

i. the European Framework Convention on Transfrontier Co-operation;

ii. the European Charter for Regional or Minority Languages;

to the Entities:

e. the Federation of Bosnia and Herzegovina should amend its Constitution in order to clarify the competency of the federation to legislate in the field of local self-government;

f. both Entities should take all necessary measures to guarantee the implementation of their legislation in matters of local and regional democracy and establish appropriate and simplified legal and administrative procedures to this end. The necessary subsequent laws should be enacted in due course;

g. both Entities should enact appropriate legislation on distribution of the income deriving from the newly introduced value added tax (VAT) giving local authorities adequate financial resources of their own and not constituting a means of exercising supervision over them. Clear criteria (revenue-sharing formulae) for the distribution of VAT should be developed while taking into account protection of financially weaker local authorities. Local authorities should be consulted during the process of developing such formulae;

h. given the recent abolition of local sales taxes, both Entities should ensure that local authorities can derive at least part of their financial resources from local taxes and charges according to Article 9.3 of the European Charter of Local Self-Government;

i. both Entities should work towards an adequate reform of their territorial structures, particularly focusing on creating municipalities of a sufficient size allowing appropriate performance of municipal responsibilities;

j. given the rather strict legal limitation of administrative supervision over local authorities, the Entities should continuously observe the exercise of supervision in order to identify and eliminate possible illegal practices;

k. the Federation of Bosnia and Herzegovina should consider the possibility of shifting the powers of the cantons in the field of local self-government, particularly concerning supervision and finances, to the Entities, thus permitting the concentration and unbiased exercise of power to the Entity level, possibly in a federal ministry of local self-government. If cantons are found to be necessary, they should become second-tier local authorities;

l. given the current deficiency of power of the state of Bosnia and Herzegovina in the field of local self-government and thus its present inability to fully implement its obligations deriving from the ratification of the European Charter of Local Self-Government, the Congress recommends that both Entities should, in the framework of their internal procedures, individually incorporate the European Charter of Local Self-Government in their legislation and agree on mechanisms to establish responsibility of the entities vis-à-vis the state;

m. both Entities should implement programmes to foster closer links and co-operation between their municipalities, including municipalities with different ethnic composition, and reinforce the dialogue between the local government associations of the two Entities with a possible view to their unification;

n. the Entities should concretise their legislation on municipal local property;

to the municipalities:

o. the municipalities of both Entities, particularly those with majority populations of different ethnic background, should initiate and maintain close co-operation. This

should be done between individual municipalities as well as through an improved co-operation or even unification of the existing associations of municipalities of both Entities;

to the Committee of Ministers:

p. the Committee of Ministers should transmit this recommendation and its explanatory memorandum to the authorities of Bosnia and Herzegovina;

to the Parliamentary Assembly:

q. the Parliamentary Assembly should take account of the foregoing comments and recommendations in monitoring the honouring of commitments entered into by Bosnia and Herzegovina;

to the authorities of Bosnia and Herzegovina responsible for local and regional self-government:

r. 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;

s. 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.

1. Debated and adopted by the Standing Committee of the Congress on 14 November 2006 (see Document CG(13)30, draft recommendation presented by C. Newbury (United Kingdom, L, EPP/CD), and K. Behr (Germany, R, EPP/CD), rapporteurs).