

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Recommendation 87 (2001)¹ on local and regional democracy in Lithuania

The Congress,

1. Recalling:

a. Article 2, paragraph 3, of the Committee of Ministers' Statutory Resolution Res(2000)1 on the CLRAE which entrusts it with the preparation of country by country reports on the situation of local and regional democracy in member states and in applicant states;

b. the CLRAE Resolutions 31 (1996), 58 (1997) and 106 (2000) establishing guiding principles on the preparation of the above-mentioned reports;

2. Having regard to the mandate given to its Institutional Committee to prepare these reports and following an agreement with the Committee of the Regions to prepare reports on countries which are candidates to be member of the European Union;

3. Having examined the report of the Institutional Committee on the situation of local and regional democracy in Lithuania, prepared by Mr Louis Roppe (Belgium, L) and Mr Owen Masters (United Kingdom, R), rapporteurs;

4. Thanking the representatives of the Lithuanian Government (Private Office of the Prime Minister, Ministry of the Interior, Ministry of Finance, Ministry of Justice, Ministry of Environment and Territorial Planning), Parliament (Committee on Public Administration and Local Self-Government), Presidency (Office of the Advisor for Local Affairs), representatives of the Association of Local Authorities of Lithuania, mayors, local councillors and the head of the European Union delegation in Lithuania met by the CLRAE rapporteurs during their two official visits to the country for the frank and constructive dialogue and the detailed information provided for the preparation of the report;

5. Thanking in particular the Department on Public Administration of the Ministry of the Interior for the perfect organisation of the above-mentioned visits;

6. Welcoming the ratification by Lithuania of the European Charter of Local Self-Government (25 May 1999) – which was accepted without any reservations – and of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (13 June 1997) and hoping that the two additional protocols to this Convention will soon be ratified by the Lithuanian authorities;

7. Regretting that Lithuania has not yet signed and ratified the European Convention on Regional or Minority Languages and the European Convention for the Participation of Foreigners in Public Life at Local Level,

8. Takes note of the revised legal framework related to local self-government and regional development. This represents a good basis for the development of local and regional democracy in the country in accordance with the provisions of the European Charter of Local Self-Government and in line with the principles expressed in the draft European charter of regional self-government;

9. Follows with great interest the new reform programme on public administration elaborated by the government and approved by the parliament in 2000 referring, *inter alia*, to the setting up of enlarged regions based on a genuine system of direct self-government and to the transfer of important responsibilities to the existing municipalities;

10. Expresses the view that in order to put into action the above-mentioned reform programme successfully and to facilitate the implementation of the above-mentioned legal framework, the principle of subsidiarity defined in Article 4, paragraph 3, of the European Charter of Local Self-Government could be explicitly reflected in the legislation regulating the share of responsibilities between the different tiers of government;

11. In this respect, considers that further to the incorporation of the above-mentioned article in the domestic legal system through the Charter ratification, the express mention of the principle of subsidiarity in a legal text alongside the principle of local self-government (defined in Article 3, paragraph 1 of the European Charter of Local Self-Government and already recognised in the constitution and in the relevant legislation), would complete the legal framework of Lithuania in the field of public administration by making this framework an innovative model for other Council of Europe's member states;

12. As far as local democracy is concerned, considers that the legal framework referring to local self-government is, in some cases, incomplete and contradictory and believes that some laws and implementing regulations should be revised or adopted by the competent Lithuanian authorities;

13. With this in mind, invites the competent Lithuanian authorities to take into account the following considerations and recommendations:

13.1. Concerning local authorities' responsibilities (regulated by Articles 3, paragraph 1, and 4 of the European Charter of Local Self-Government):

a. notes that the detailed description of functions combined with the principle of general competence made by the Lithuanian relevant laws, represents a very positive basis for the functioning of local authorities in Lithuania;

b. nevertheless, recommends that the legislation on local self-government:

i. be further improved by specifying that responsibilities transferred (by legislative decisions) to local authorities shall be full and exclusive and that they may not be undermined or limited by another central or regional authority except as provided for by the law;

ii. refer to the possibility for local authorities to adapt the exercise of delegated responsibilities to local conditions;

13.2. In respect of local authorities' financial resources (set forth in Article 9 of the European Charter of Local Self-Government):

a. was informed that a conflict occurred between a number of local authorities and the government concerning the additional expenditures in local budgets indirectly determined by decisions taken by the government and the non-compensation of these expenses by central authorities as provided by law;

b. in this respect, is happy to understand that the government recently took the initiative to prepare a draft law for the recognition of its debt and that the Association of Local Authorities of Lithuania will co-operate with the government and the parliament in the framework of this procedure;

c. with this in mind, nevertheless expresses its concern on:

i. the limited proportion of revenue raised in Lithuania by genuine local taxation for which local authorities can set the rates and the predominant role played by transfers and share taxes as opposed to own resources;

ii. the relative lack of productivity of the taxes which local authorities are entitled to levy;

iii. the fact that, in some cases, new responsibilities are delegated to local authorities without the necessary resources to carry them out;

iv. the consequences of national economic problems on local budgets, even when these consequences are linked to the constraints fixed by other international organisations like the European Union or the International Monetary Fund;

d. with this in mind, recommends that:

i. as already announced by some representatives of the government and the parliament, the system of public taxation be revised to allow local authorities to have, not only in theory but also in practice, the possibility to levy their own taxes for which they can determine the rate;

ii. in order to implement the above-mentioned revision, as foreseen by law, and in application of the above-mentioned principle of subsidiarity, the relevant land properties and real-estates are transferred to local authorities;

iii. when new responsibilities are transferred and/or delegated to local authorities, adequate financial resources to carry them out must also be provided;

iv. in order to respect this requirement – Lithuanian authorities recognise in their legislation the principle of

concomitant financing – as it is expressed by the CLRAE in its Recommendations 64 (1999) and 79 (2000);²

v. all decisions taken to satisfy the conditions imposed by international agreements and which can affect local authorities' right to adequate financial resources, be primarily discussed with the representatives of the above-mentioned authorities;

13.3. As for the right of consultation of local authorities and communities (set forth in Articles 4, paragraphs 6, 5 and 9, paragraph 6, of the European Charter of Local Self-Government):

a. was informed that some conflicts occurred notably referring to financial matters;

b. with this in mind, recommends that:

i. a regular consultation of the above association be undertaken when referring to local authorities' interests and responsibilities;

ii. the existing relevant agreement be carefully implemented in the future;

iii. in particular, when a change is proposed in relation to the current territorial administrative organisation, local communities concerned are also duly consulted;

13.4. Regarding the administrative supervision of the local authorities' activities (regulated by Article 8 of the European Charter of Local Self-Government):

a. reminds that all controls exercised by a central or regional authority should be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interest which it is intended to protect;

b. in this respect, recommends that:

i. the control performed by government's representatives through motivated recommendations and requests, as well as through appeals to courts, be preferred to any supervision aimed at suspending by decree the enforcement of local authorities' decisions;

ii. the municipal controller should not, in practice, become for central authorities a way to perform an indirect financial a priori control on the expediency of municipalities' decisions;

13.5. Concerning the right of local authorities to judicial protection (set forth by Article 11 of the European Charter of Local Self-Government):

a. was informed that the legislation was recently modified and, therefore, differently interpreted;

b. in this respect, recommends:

i. securing in a definitive manner in the relevant legislation the constitutional rights of local authorities to lodge appeals against decisions and/or omissions of central authorities (including the government) which appear to violate local authorities' rights;

ii. that the constitutional rights of local authorities to judicial protection be secured in practice by enabling the competent courts to expediently adopt decisions in response to the above-mentioned appeals;

13.6. Concerning the political issue related to the possible direct election of mayors by the population:

a. considers that it should be further discussed by central and local authorities and by the political parties concerned;

b. is convinced that this important issue must take into account all the advantages and disadvantages of direct election of mayors and that the complexity of the procedure requested (the amendment of the constitution is required) represents a guarantee to insure an in-depth and shared understanding of the above advantages and disadvantages, taking into account the current social, political and economical situation of the country;

13.7. Concerning the training activities for local elected representatives and staff, is convinced that there is a need to further develop these activities in Lithuania and that local authorities must be given the resources to organise and be responsible for the training of their elected officials and staff, in co-operation with Ento (European Network of Training Organisations);

14. As far as the ongoing reform on regional administration is concerned, taking into account the relevant laws and programmes and bearing in mind the principles expressed in the CLRAE draft European charter of regional self-government, invites the competent Lithuanian authorities to take into account the following considerations and recommendations:

a. the final objective of the above-mentioned reform aimed at setting up enlarged regions run by directly elected regional councils representing a genuine system of regional self-government should be pursued to the end;

b. nevertheless, this objective:

i. cannot be realised artificially and should be based on concrete socio-economical and ethno-cultural needs;

ii. should be pursued gradually by means of a regular consultation with the population;

c. the current system of regional administration based, on the one hand, on regional councils consisting of municipal councillors, mayors and counties' (centrally appointed) governors and, on the other hand, on counties (representing central authorities at regional level) must be regarded as an initial step allowing Lithuanian authorities to achieve the above mentioned territorial reform towards the creation of a system of regional self-government;

d. in this respect, it is necessary to monitor:

i. the functioning of this provisional system in order to assess if it is necessary to maintain the counties once the reform is achieved;

ii. the need to attribute specific executive bodies and administrative structures to the authorities representing the proposed new tier of regional self-government;

e. the share of responsibilities between municipalities, regions (the current ones and those which could be created as a result of the ongoing reform) and counties should be determined on the basis of the principle of subsidiarity which, as already mentioned, establishes that responsibilities must be generally exercised, in preference, by those authorities which are closest to the citizens.

1. Debated by the Congress and adopted on 30 May 2001, 2nd Sitting (see Doc. CG (8) 4 draft recommendation presented by Mr L. Roppe and Mr O. Masters, rapporteurs).

2. This principle establishes that in order to maintain a balance between responsibilities and the requisite resources for exercising them, each new transfer of responsibility should be clearly accompanied by a corresponding means of funding, regardless of whether this entails the transfer of a new tax resource, the provision of a new transfer resource, the allocation of new staffing or the assignment of material facilities.