

36th SESSION

Local and regional democracy in Poland

Recommendation 431 (2019)¹

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b, of the Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating 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. Chapter XVII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

e. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

f. the appended explanatory memorandum on local and regional democracy in Poland.

2. The Congress points out that:

a. Poland joined the Council of Europe on 26 November 1991, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 19 February 1993 and ratified it in full on 22 November 1993. The Charter entered into force on 1 March 1994;

b. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in Poland. It instructed Mr David BARO RIBA, Andorra (L, NI-NR) and Mr Pascal MANGIN, France (R, EPP/CCE), with the task of preparing and submitting to the Congress a report on local and regional democracy in Poland. The delegation was assisted by Prof. Tania GROPPi, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

c. The monitoring visit took place from 5 to 7 of June 2018. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to this document;

d. The co-rapporteurs wish to thank the Permanent Representation of Poland to the Council of Europe and all those whom they met during the visit.

3. The Congress notes with satisfaction that in Poland:

a. the principle of local self-government is expressly recognised by the Constitution;

b. the Charter benefits from a quasi-constitutional status;

c. local authorities enjoy freedom of association to defend their interests;

¹ Debated and adopted by the Congress on 2 April 2019, 1st sitting (see Document CG36(2019)13, explanatory memorandum), corapporteurs: David BARO RIBA, Andorra (L, NR) and Pascal MANGIN, France (R, EPP/CCE).

d. the capital city has a special status.

4. The Congress expresses its concerns on the following issues:

a. the level of autonomy of local authorities is being eroded by the re-centralisation of several competences previously transferred to them (Articles 3.1, 4.2-4.5);

b. the numerous interferences by State authorities within the local independent functions undermine the assignment to local authorities of full and exclusive powers (Article 4.4);

c. local authorities do not have discretion in the exercise of delegated functions, as a consequence of the detailed State regulation of delegated tasks (Article 4.5);

d. although the Joint Committee represents an adequate legal framework for consultation, the recent tendency is to bypass this mechanism, making it ineffective (Article 4.6, 9.6);

e. the supervision on local authorities, carried out by government representatives, is increasingly overused and cannot be considered proportional to the relevance of the interests that it is intended to protect (Article 8.3);

f. in spite of remarkable economic growth, the financial resources that local authorities can freely dispose of are neither adequate nor commensurate with their responsibilities and the tendency towards transferring the responsibilities to local authorities without transferring adequate financial resources is increasing (Article 9.1,9.2);

g. local authorities lack sufficient financial resources from local taxes and charges of which they have the possibility to determine the rate (Article 9.3, 9.4);

h. lowering the scale of financial compensation to local elected representatives worsens the conditions under which responsibilities at local level are exercised;

i. an increasing number of acts of the State imposes a rigid internal organisational structure on local authorities thus limiting their ability to take account of local circumstances and administrative efficiency in organising their own administrative services;

j. local authorities' level of trust in courts for the legal protection of their autonomy is declining, thus restricting genuine enjoyment by local authorities of the right to recourse to a judicial remedy.

5. In light of the foregoing, Congress requests that the Committee of Ministers invite the authorities of Poland to:

a. get back on the path to decentralisation and reverse the trend towards the re-allocation to the State of local and regional competences which limits the local authority's scope of action and runs contrary to the Polish constitutional democratic tradition;

b. ensure that the subsidiarity principle is applied in practice, by recognising to the local authorities full and exclusive powers and by reducing the level of interference by State authorities with municipal independent functions;

c. avoid overregulation of delegated tasks and thus allow local authorities to have more discretion in adapting their exercise to local conditions;

d. reinstate a fair consultation process with local authorities, especially by submitting all the draft bills and draft regulation to the Joint Committee and taking into consideration the remarks of the component representing local governments within the Joint Committee;

e. make sure that the supervision over the acts of local authorities is proportional to the importance of the interests that it is intended to protect;

f. allocate sufficient financial resources to local authorities, thereby respecting the principle that the resources should match the functions and ensure that the transfer of delegated competences to subnational level is accompanied by concomitant finances;

- g.* enable local authorities to establish local taxes and to determine their rate to increase fiscal capacity of local authorities;
- h.* ensure that the adoption of any measures impacting upon the conditions of office of local elected representatives, including their financial remuneration, does not negatively affect their ability to freely exercise their functions;
- i.* refrain from adopting numerous regulations at the central level that would unnecessarily rigidify local internal administrative structures and make them less adjustable to local conditions;
- j.* in order to guarantee to local authorities the right of recourse to an effective remedy and to restore their trust in the national judicial system, follow the recommendations of the Venice Commission, contained in its opinions on the judiciary in Poland;
- k.* consider signing and ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No 207).