



## Recommendation 120 (2002)<sup>1</sup> on local and regional democracy in Poland

The Congress,

### 1. Recalling:

a. Article 2, paragraph 3, of the Committee of Ministers' Statutory Resolution (2000) 1 on the Congress of Local and Regional Authorities of Europe (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. its Resolutions 31 (1996), 58 (1997) and 106 (2000) establishing guiding principles on the preparation of the above-mentioned reports;

c. its Recommendation 83 (2000) on the evaluation of regionalisation in central Europe, especially in Poland;

2. Bearing in mind 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 for membership of the European Union;

3. Having examined the report of its Institutional Committee on the situation of local and regional democracy in Poland, prepared by Ms Kathryn Smith (United-Kingdom, L) and Mr Miljenko Doric (Croatia, R), rapporteurs;

### 4. Thanking:

a. the representatives of the Polish Government (Ministry of the Interior and Public Administration), Parliament (Senate and *Sejm* committees concerned with local and regional self-government), associations of local and regional authorities, the mayors, the local councillors and the representative of the European Union delegation in Poland met by the rapporteurs during their two official visits to the country (Warsaw, 16-17 May and Warsaw-Bialystok, 5-7 September 2002) for the open dialogue and the detailed information provided;

b. Professor Marie José Tulard (France), expert, and Professor Michal Kulesza (Poland), member of the Group of Independent Experts on the European Charter of Local Self-Government of the Council of Europe, for the substantial help they have given the rapporteurs in carrying out their task;

c. Mr Jan Olbrycht, head of the Polish delegation to the Congress, Professor Jerzy Regulski, President of the

Foundation in support of local democracy in Poland and former Permanent Representative of Poland to the Council of Europe, for the extensive information and the detailed comments provided on the occasion of the above-mentioned visits, as well as the Congress secretariat for the assistance provided in this respect;

5. Welcoming the ratification by Poland of the European Charter of Local Self-Government (22 November 1993) – which was accepted without any reservations – and of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (19 March 1993);

6. Regretting that Poland has not yet signed nor ratified the European Convention on Regional or Minority Languages and the European Convention for the Participation of Foreigners in Public Life at Local Level;

7. Wishes to draw the attention of the Polish parliamentary and governmental authorities to the following considerations:

a. the creation in the country of the three-tiered self-government system represents a suitable framework to satisfy the citizens' needs and interests at local and regional level;

b. this system constitutes an effective implementation of the subsidiarity principle expressed by the European Charter of Local Self-Government (Article 4, paragraph 3);

c. the two-round reform creating, respectively, in 1990, municipalities (*gminas*) and, in 1998, counties (*powiats*) and regions (*voivodships*) must be regarded as a very important achievement towards effective democracy, economic development and a quick integration into the European Union;

d. within the Council of Europe, this reform is considered as a positive model for central and eastern European countries wishing to adapt their territorial organisation system to the emerging needs of modern societies;

e. the Polish Constitution contains guarantees for both local and regional self-government (*gminas, powiats and voivodships*); the European Charter of Local Self-Government applies to local authorities exclusively (*gminas and powiats*); in this respect, from a formal point of view, it is surprising to note that the Polish Constitution and the Polish version of the European Charter use the same expression (*territorial self-government*) to refer to different levels of self-government in the country;

f. in substance the legislation, adopted between 1990 and 2000 as an implementation of the said reform, globally respects the principles contained in the European Charter of Local Self-Government;

g. with regard to the ongoing implementation of the reform, it is noted that over the last two years the decentralisation process slowed down in the following areas:

i. transfer and delegation of responsibilities to local and regional authorities;

ii. share of functions between the representatives of central authorities at regional level (*voivods*) and the regional self-governing authorities (*voivodships*);

iii. transfer of financial resources to local and regional authorities;

iv. recruitment of qualified personnel within local and regional administrations;

v. consultation with local and regional authorities in relation to the issues which concern them directly;

vi. control performed by central authorities over local and regional authorities' decisions;

vii. training programmes for local and regional elected and appointed representatives;

*h.* moreover, following the information provided by the European Union representatives, it appears that the role and the participation of local and regional authorities in the European Union funding process (in relation to both the pre-accession and the preparation of the post-accession funds) is limited and not properly secured;

*i.* the difficulties mentioned in paragraphs 7.g and 7.h above seem to be enhanced by general factors linked to the functioning of public authorities in the country, namely:

i. possible decreasing interest of citizens in public life at local and regional levels;

ii. overwhelming role of political parties in the decision making of certain local and regional authorities;

iii. excessive politicisation of local and regional authorities' administrations;

iv. corruption cases;

*j.* the recently adopted laws (2002) on the city of Warsaw and the direct election of mayors can be considered as a way to solve a number of problems mentioned in the above paragraphs. However, it is noted that these laws were adopted through an accelerated and sometimes controversial legislative process, apparently not fully accepted by all the parties concerned;

8. With this in mind, and taking into account the information and conclusions contained in the report, mentioned in paragraph 3 above, wishes to address the following recommendations to the Polish parliamentary and governmental authorities:

*a.* bearing in mind paragraph 7.e above, and in order to avoid possible misunderstandings, the scope of the European Charter of Local Self-Government in Poland should be clarified by the competent Polish authority to the Secretary General of the Council of Europe;

*b.* the European Convention on Regional or Minority Languages, the European Convention for the Participation of Foreigners in Public Life at Local Level and the two additional protocols to the European Outline Convention on Transfrontier Co-operation between Territorial

Communities or Authorities should be ratified by the competent Polish authorities as soon as possible;

*c.* a step by step, clearly oriented, long-term implementation programme, adopted in consultation with the associations representing local and regional authorities, should be adopted by the government. It should aim at establishing the different phases of the implementation of the reform procedure in the future and at expressing well-defined short and medium-term objectives. The programme should also try to identify the difficulties which might hamper the process and propose effective solutions to tackle these difficulties without slowing down the whole process;

*d.* on this basis, local and regional authorities and their communities should have the concrete conviction that the reform process, even with a number of difficulties, is vigorously implemented by the state authorities, regardless of the political standpoint of the ruling forces; the above-mentioned programme should contribute to ensuring that the reform voted and implemented by the Polish authorities during the nineties is carried out by successive governments;

*e.* the direct election of mayors could represent a way to improve citizens' interest for public life at local level. Nevertheless, other concrete measures should be taken by the state authorities in order to reassure citizens that the decisions taken at local and regional level are adopted in their own interest and under the direct responsibility of the local and regional bodies they have elected; in this respect it is also important that political parties avoid considering self-governing authorities as a way to consolidate their strength over the territory;

*f.* the governmental programme mentioned in paragraph 8.c should favour the adoption of regulations aimed at ensuring the following principles and objectives;

*g.* in order to avoid confusion and possible misunderstandings, the legal sharing of responsibilities between, on the one hand, local and regional authorities and, on the other, the government authorities (both at central and peripheral level) should be constantly clarified and adapted in the light of the spirit of the reform. This sharing should not be undermined by the adoption of *ad hoc* measures. With this in mind, the share of responsibilities between *gminas*, *powiats* and *voivodships* should also be permanently clarified and updated in consultation with the associations concerned;

*h.* the gradual transfer of responsibilities to local and regional authorities should be accompanied by the transfer of the necessary financial resources to carry them out; the difficult economic conditions of the country should not represent an excuse to weaken the powers of local and regional authorities;

*i.* in this respect, Polish authorities should take into consideration the future possibility to authorise *powiats* and/or *voivodships* to levy their own taxes (within the limits of the law); in order to avoid creating an excessive financial burden for the citizens, this measure should be

accompanied by the parallel withdrawal of a number of state taxes;

*j.* central authorities should ensure that control over the decisions taken by self-governing authorities in the areas of their responsibilities is strictly confined to controlling their legality and not their justification expediency. This rule must be respected even when the financial resources allocated to local and regional authorities to carry out the above-mentioned responsibilities are directly transferred by the state authorities;

*k.* apart from exceptional cases described by law, the action and the application (before courts) to set aside a decision of a self-governing authority by the competent supervisory central bodies should not stay its execution;

*l.* the power of the Prime Minister to suspend, for a given time, the self-governing authorities which failed to perform their tasks effectively should be restricted to exceptional cases clearly specified by law;

*m.* changes in local authority boundaries should be made after prior consultation with the local communities concerned, possibly by means of a referendum where this is permitted by law. This consultation must follow in the appropriate procedure and refer to all the citizens concerned;

*n.* the existing "Joint Committee" formed by central, local and regional authorities' representatives allows them to be duly informed and consulted on official initiatives taken by central authorities. It should be given a permanent basis and refer to all government and parliament draft decisions (concerning laws, orders, decrees, regulations but also technical projects and proposals, etc.);

*o.* the conditions of service of local government employees shall permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided. With this in mind, politicisation of local government employees should be avoided;

*p.* in order to avoid political conflicts or interferences in the functioning of self-government at regional level, the representatives of central authorities in the regions (*voivods*) should be civil servants. On this basis, a public register of *voivods*, recruited for their merit and competence, should be created;

*q.* central authorities should reinforce adequate training programmes of local and regional elected and appointed representatives. These programmes, which could be supported by territorial and European institutions, should be carried out taking into account the main objectives of the reform implementation programme and regulations;

*r.* the participation of local and regional authorities in the European funding process (notably with regard to the period subsequent to the accession to the European Union) should be reinforced. It is not acceptable that the needs linked to the proper management of the above-mentioned funds slow down the decentralisation process or represent a reason for marginalising self-governing authorities; in particular, the political role and the co-financing capacity of *voivodships* should be strengthened;

*s.* transborder co-operation should be further developed by an appropriate decentralisation at local and regional level. Future reform projects should promote and facilitate transfrontier co-operation and the creation of Euro regions. This transborder co-operation should especially be strengthened along the southern and western border (future inner European Union border) and particular attention should be paid to the northern and eastern border (future European Union external border) in order to maintain good neighbourly relations and appropriate transborder co-operation;

9. With this in mind, invites:

*a.* the Committee of Ministers to forward this recommendation and its explanatory memorandum to the Polish authorities;

*b.* the European Commission to take into account this recommendation and its explanatory memorandum in relation to the accession of Poland to the European Union and forwards a copy of these texts to the European Parliament and the Committee of the Regions;

*c.* the Polish Minister responsible for Local and Regional Self-Government to participate in its next plenary session (Strasbourg 20-22 May 2003) to present the measures taken and/or envisaged to implement this recommendation.

---

1. Debated and adopted by the Standing Committee of the Congress on 14 November 2002, (see Doc. CG (9) 21, draft recommendation presented by Ms K. Smith and Mr M. Doric, rapporteurs).