

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 407 (2017)¹ Local and regional democracy in Switzerland

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

a. Article 2, paragraph 1*b*, of Statutory Resolution CM/Res(2015)9 relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto, which provides 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 Statutory Resolution CM/Res(2015)9, which provides that “[t]he 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. Congress Resolution 409 (2016) on the revision of the Rules and Procedures of the Congress, in particular Chapter XVII of the latter on the organisation of the monitoring procedures of the Congress;

d. Congress Recommendation 219 (2007) on the status of capital cities;

e. Congress Recommendation 285 (2010) on regional democracy in Switzerland;

f. Congress Resolution 299 (2010) on follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy (MCL-16(2009)11) in its monitoring activities, as well as the reply given by the Committee of Ministers to Congress Recommendation 282 (2010) on the same subject (CM/Cong(2011)Rec282 final), which encourages the governments of member States to take account of the aforementioned reference framework in their policies and reforms;

g. the explanatory memorandum on local and regional democracy in Switzerland, drawn up by the rapporteurs, Mr Marc Cools, Belgium (L, ILDG), and Mr Dorin Chirtoaca, Republic of Moldova (R, EPP/CCE), following a visit to Switzerland from 23 to 25 January 2017.

2. The Congress notes that:

a. Switzerland acceded to the Council of Europe on 6 May 1963. It signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 21 January 2004 and ratified it on 17 February 2005 with the exception of Article 4.4, 6.2, 7.2, 8.2, 9.5 and 9.7. In Switzerland, the Charter applies only to the “political municipalities” (the first tier of local government). The cantons (the regional tier) are expressly excluded. In the Swiss context, “national” refers to the federal level, “regional” the cantonal level and “local” the municipal level;

b. the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (Monitoring Committee) decided to examine the situation of local and regional democracy in Switzerland and appointed Mr Marc Cools, Belgium (L, ILDG), and Mr Dorin Chirtoaca, Republic of Moldova (R, EPP/CCE), as co-rapporteurs, and instructed them to prepare and submit to the Congress a report on local and regional democracy in Switzerland;

c. the monitoring visit took place from 23 to 25 January 2017. During the visit, the Congress delegation² met representatives of the national institutions (the parliament, the Federal Department of Justice and Police, the Federal Department of Home Affairs, the Federal Department of the Environment, Transport, Energy and Communication, the Federal Department of Finance, the Swiss Federal Audit Office, judicial institutions (federal court), the ombudsman (at local and cantonal levels)), various local authorities (city of Bern, city of Zurich, municipality of Oetwil an der Limmat), cantons (canton of Jura, canton of Zurich), members of the Swiss delegation to the Congress, the Association of Swiss Municipalities, the Conference of Cantonal Governments, the Swiss Association for the Council of European Municipalities and Regions and the Union of Swiss Towns. The detailed programme of the visit is appended to the explanatory memorandum;

d. the rapporteurs are aware that pursuant to Article 50 of the federal constitution, the Swiss Confederation guarantees the municipalities the right to self-government within the limits of cantonal law. Consequently, the commitments entered into under the European Charter of Local Self-Government legally bind the Confederation, but it is primarily the cantons’ responsibility to ensure the Charter’s implementation. Their recommendations will therefore be addressed to the Swiss Confederation as a member of the Council of Europe, but the implementation of these recommendations will also be a matter for the cantons;

e. the delegation wishes to thank the Permanent Representation of Switzerland to the Council of Europe and the secretariat of the Swiss delegation to the Congress for helping with the organisation and the successful conduct of the visit. The rapporteurs also express their gratitude to the country’s national, cantonal and local authorities, the Swiss delegation to the Congress, the national associations of local and regional authorities and everyone they spoke to during the visit for their warm hospitality, their readiness to help and the quality of the information provided.

3. The Congress notes the following with satisfaction:

a. a high degree of self-government in all Swiss municipalities, although their situation may vary from one canton to another;

b. general compliance with the commitments entered into by the Swiss Confederation when it ratified the European Charter of Local Self-Government on 17 February 2005;

c. considerable financial autonomy of the municipalities, which are in a healthy financial situation with a relatively low debt ratio;

d. the active role played by the associations of municipalities, especially the Association of Swiss Municipalities and the Union of Swiss Towns, which enables influence to be exerted on decision making, mainly at cantonal level but also at federal level;

e. the fact that direct democracy procedures, such as popular initiatives, referendums and popular assemblies, are highly developed at the level of the municipalities, with the municipal authorities therefore being under constant public scrutiny;

f. the ratification by Switzerland, on 18 July 2017, of 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).

4. The Congress notes that the following points call for particular attention:

a. in practice, the weak direct involvement of municipalities, especially the large cities, in decision making at federal level from the preparatory stage;

b. the militia system could impede access to local elective office owing to the difficulties in striking a balance between occupational activities and the responsibilities that go with municipal posts. This means local mandates can only be exercised by certain categories of citizens;

c. municipal fragmentation in Switzerland, resulting in a lack of adequate human and financial resources in small municipalities, especially to enable them to cope with increasing responsibilities;

d. the issue of the democratic legitimacy of the administrative bodies belonging to intermunicipal structures, to which key municipal responsibilities are transferred, and which are not made up of equal numbers of officials and elected representatives;

e. the fact that no account is taken in domestic legislation of the special situation of the city of Bern, given its specific

character as the seat of the government and of the federal parliament;

f. the exclusion of the cantons from the scope of the Charter.

5. In the light of the above, the Congress recommends that the Committee of Ministers call on the Swiss authorities to:

a. strengthen the participation of municipal representatives, mirroring the arrangements that apply to cantonal representatives, in expert committees and working groups tasked with drafting legislation at federal level, and grant the large cities specific status in consultative bodies and in consultation procedures, so as to ensure that they represent themselves rather than only being represented by associations;

b. start a reflection involving the three tiers of government (confederation, cantons, municipalities) on bringing about improvements to the militia system currently in force;

c. continue to encourage mergers between municipalities, especially by providing financial incentives;

d. provide for the administrative bodies belonging to intermunicipal structures to be made up of a minimum percentage of elected representatives, so as to safeguard the democratic nature of these institutions;

e. determine in a special law the framework and arrangements governing the funding by the Confederation of the financial burden borne by the city of Bern for hosting not only the government and the federal parliament, but also foreign embassies and diplomatic representations;

f. consider, in consultation with the cantons, the possibility of extending the scope of the Charter to the cantons, which would further safeguard their powers of self-government in relation to the Confederation;

g. consider the ratification of Articles 4.4, 6.2, 8.2 and 9.5 of the Charter, which are *de facto* complied with in Switzerland.

6. The Congress calls on the Committee of Ministers to take account of this recommendation on local and regional democracy in Switzerland and the accompanying explanatory memorandum in its activities relating to this member State.

1. Debated and adopted by the Congress on 20 October 2017, 3rd sitting (see Document [CG33\(2017\)14](#), explanatory memorandum), co-rapporteurs: Marc COOLS, Belgium (L, ILDG), and Dorin CHIRTOACA, Republic of Moldova (R, EPP/CCE).

2. The rapporteurs were assisted in their work by Professor André Roux, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress secretariat.