

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 176 (2005)¹ on local and regional democracy in Turkey

The Congress,

1. Bearing in mind the explanatory memorandum on local and regional democracy in Turkey [CG (12) 25 Part II] tabled by Anders Knape (Sweden, EPP/CD, L) and Hans-Ulrich Stöckling (Switzerland, ILDG, R) asks the Committee of Ministers to take account of the following conclusions with regard to the current state of local and regional democracy in Turkey and to invite the Turkish authorities to implement the following recommendations:

A. Global reforming process

2. The Congress acknowledges that in recent years there have been clear signs of a commitment to a substantial institutional change shown by the Turkish Government as regards modernisation of local as well as provincial government and that the Turkish Government has embarked upon a substantial reform programme of legislative change. However, the programme is still in the course of implementation and a full assessment of its effect cannot yet be made;

3. The Congress notes that four main long-awaited legislative measures (the Law on Metropolitan Municipalities, the Law on Municipalities, the Law on the Special Provincial Administration and the Law on Associations/Unions of Municipalities) have reached the statute book;

4. It is also understood that further legislative proposals are also under consideration by the government (these may include a law on village administration, a law on municipal revenues and a law on public service). This list is important because it is appreciated that local government reform in Turkey will be fully effective only if a broad package of measures, including these proposed laws, can be enacted. In addition, it is also understood that a further programme of constitutional amendment is contemplated which would be important for the longer-term readjustment of governmental relationships within the country and of ministerial powers to suspend mayors;

5. It should also be noted that devolution reform is not unanimously received in all political circles in Turkey. Some argue that devolution may have the potential of distorting the unity and the integrity of the state as well as consistency and complementarity of public services;

6. It is evident that once the four new laws have been fully implemented and the necessary secondary regulations

have been promulgated, much progress will have been made. It is, however, Congress' view at this stage that it is essential that these laws are joined by the remainder of the overall reform package (including, above all, the financial reforms) before one can be confident of the prospect of real governmental change on the ground. The dimensions of the changes required should never be underestimated;

7. Recommendation: the Congress recommends that:

a. the Turkish Government continues reforming and modernising the legislative basis of local and provincial government in close consultation with the Association of Turkish Municipalities;

b. the four laws be complemented by other pieces of legislation, in particular one on financial resources;

c. the Turkish authorities consult Council of Europe experts, if deemed necessary, on the issue of local finances;

B. Current state of local and provincial government and their compliance with the European Charter of Local Self-Government

8. Despite the start of an ambitious reform programme, the truth is that, measured by reference to legislation actually passed and implemented, the Congress must acknowledge that little has happened so far to reform the system of local government in Turkey which has been described in the Congress reports of recent years;

9. Concept of local self government (Article 3). The Congress considers that although it is clear that some metropolitan municipalities and some of the larger municipalities are approaching a situation where they "regulate and manage a substantial share of public affairs", the continuing dominance of the Provincial Governors, the restricted functions of the smaller municipalities and the weakness of village administrations leave the general pattern of local self-government in Turkey still not satisfactory;

10. Scope of local self-government (Article 4). The formal scope of the powers of municipalities (though not of the villages), as described in the law, is extensive but it would be impossible for the Congress, given the degree of central supervision, to describe them as "full and exclusive". The extent of functions (other than those provided ad hoc as separately funded project developments) is not large. One feature is that many functions which might reasonably be expected to be exercisable by local authorities are, in practice, being privatised;

11. Recommendation: the Congress recommends that the Turkish Government works with local authorities on the gradual transfer of powers in accordance with the newly adopted legislation. Specific attention should be paid to small municipalities and villages. The Congress suggests that those services which might reasonably be expected to be delivered by local authorities, should be discharged by them;

12. Appropriate administrative structures and resources (Article 6). The Congress takes the view that generally

resources are insufficient to ensure “effective management” locally. In particular, there is no guarantee of the conditions to “permit the recruitment of high quality staff on the basis of merit and competence”;

13. Recommendation: the Congress recommends that necessary steps be undertaken to ensure the recruitment of high quality staff;

14. Conditions under which responsibilities are exercised (Article 7) and administrative supervision of local authorities (Article 8):

a. one improvement in practice which has to be noted is that, after a period in the 1990s when many mayors were suspended or dismissed from office, the record over the years 2002 (total 16 suspended), 2003 (12) and 2004 (4) appears to have improved. Thus far, however, the constitutional and legislative provisions which have attracted criticism in earlier reports remain in place;

b. the Congress considers that the long-standing weight of central supervision and control of local authorities has not yet been fully lifted. Article 127 of the Turkish Constitution still provides that “the central administration has the power of administrative tutelage/trusteeship over local authorities within the framework of principles and procedures set forth by law with the objective of ensuring the functioning of local services in conformity with the principle of the integral unity of the administration, securing uniform public service and meeting local needs in an appropriate manner”;

15. Recommendation: the Congress recommends that thoughts should be given (in line with previous Congress’ recommendations) at governmental and parliamentary level as to how to change Article 127 of the constitution, with a view to easing the system of state tutelage over local authorities;

16. Financial resources of local authorities (Article 9):

a. the Congress takes the view that financial resources available to local authorities, with the exception of large municipalities, remain a very substantial problem for local autonomy in Turkey and, despite the institutional changes foreshadowed in the first set of legislative amendments introduced in 2004, a draft law on local finance has not yet been published. This is considered to be a major gap;

b. it cannot be said either that today the major part of local authorities have adequate financial resources (commensurate with their responsibilities) of which they may dispose freely. The Congress notes a heavy dependence upon central government grants (many of which are specific and project-related) rather than locally determined taxes and charges (even if figures for the years 1995-2001 do show a small (but growing) share of GNP (2.42% to 3.18%) and GDP (2.6% to 3.15%) allocated to municipalities);

17. Recommendation: the Congress recommends that a law on local finances reach the statute book and be implemented. This is considered to be a crucial issue as the

reform process will be effective only if this measure can be enacted in the short term;

18. The Congress also suggests that the heavy dependence of smaller municipalities upon central government grants be gradually reduced and that a new law allow local authorities to determine their taxes and charges in line with Article 9 of the European Charter of Local Self-government;

19. Local authorities’ right to associate (Article 10):

a. the Congress notes that there were arrangements under which local authorities could co-operate by means of consortia and these have been expanded under a new Law on Associations/Unions;

b. the Congress also notes that local authorities (municipalities) join the Association of Turkish Municipalities;

c. municipalities may be founding members or members of international organisations or bodies concerned with matters relating to the municipality’s areas of responsibility. However, the Congress puts on record that these activities can only be conducted in a manner consistent with Turkey’s foreign policy and with international treaties and they are subject to the prior authorisation of the Ministry of the Interior;

20. Recommendation: the Congress recommends that:

a. greater use be made of local authorities’ consortia and unions, especially between small municipalities, with a view to delivering the services they may not be able to discharge on their own;

b. the Association of Turkish Municipalities should become a permanent partner of the central government in working out and preparing local government policy. The association should be consulted on all relevant documents in preparation by the government;

c. the prior authorisation of the Ministry of the Interior for a municipality to join an international organisation be lifted;

21. Provincial administration

a. the Congress acknowledges that certain legislative measures have been introduced for a greater decentralisation of provincial administration. This includes:

i. the (centrally appointed) governor ceases to be the president of the provincial general council. Instead, the general council is presided over by a person elected by the council from its own membership;

ii. the provincial executive committee, which continues to be chaired by the governor, would be enlarged to include two additional appointed officials – the head of the finance department and another official to be selected by the governor;

iii. a number of adjustments are made to the functions, powers and privileges of the provincial authorities;

b. however, the Congress finds that the central state still retains a significant degree of control over provinces;

22. Recommendation: the Congress recommends that further thought should be given to greater decentralisation at provincial level, including gradual establishment of politically significant provinces able to manage a substantial share of public affairs with their own capacities;

23. The Congress invites:

a. the Committee of Ministers to transmit this recommendation to the Turkish authorities and to invite them to implement it;

b. the Turkish authorities to look into recommendations set out by the Congress and to present their implementation at one of the forthcoming sessions of the Congress;

c. the Parliamentary Assembly of the Council of Europe to take into account the Congress' conclusions on the state of local and regional democracy in the course of their post monitoring dialogue with Turkey.

1. Debated and adopted by the Standing Committee of the Congress on 8 November 2005 (see Document CG (12) 25, draft recommendation presented by A. Knape (Sweden, L, EPP/CD) and H.-U. Stöckling (Switzerland, R, ILDG), rapporteurs).