

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Recommendation 102 (2001)¹ on local and regional democracy in Ukraine

The Congress,

1. Recalling:

a. Article 2.3 of the Committee of Ministers' Statutory Resolution (2000) 1 on the CLRAE, which entrusts it with the preparation of country-by-country monitoring 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 48 (1998) based on a first monitoring report on the situation of local and regional democracy in Ukraine;²

d. its Resolution 68 (1998), based on the above-mentioned report, by which it instructed its Bureau to:

i. follow closely the progress of local and regional democratic reform in Ukraine;

ii. monitor the extent to which the proposals contained in Recommendation 48 are implemented;

iii. take whatever steps may be considered necessary to encourage the implementation of the above recommendation, for example organisation of a seminar(s) in Ukraine with the host authorities; organisation of further fact finding missions; preparation of a progress report (...);

e. the Information Report on the Situation of Local and Regional Democracy in Ukraine prepared by Mr Louis Roppe (Belgium, L) and Mr Leon Kieres (Poland, R), rapporteurs, after their official visit to Kyiv in December 2000;³

f. the two expert reports approved by the Institutional Committee concerning the removal from office of the mayor of Myrhorod as an illustration of the difficult relationship between locally elected representatives and peripheral state executive powers;

2. Having examined the second monitoring report prepared by the rapporteurs on the basis of a decision taken by its Bureau on 1 February 2001 and taking into account the results of the rapporteurs' official visits to Kyiv and

Cherkassy from 17 to 21 July and on 3 and 4 September 2001;

3. Thanking:

a. the Ukrainian presidential, parliamentary and governmental authorities for their spirit of co-operation and their constructive attitude during the preparation of this second monitoring report;

b. Dr Heinrich Hoffschulte, Dr Giuseppe La Scala, CLRAE experts, and the secretariat for assisting the rapporteurs in the preparation of the above-mentioned report;

c. the Foundation for Local Self-Government of Ukraine and Mr Vadym Proshko, Ukrainian member of the CLRAE Group of Independent Experts on the European Charter of Local Self-Government (ECLSG), for their assistance in the meetings' organisation and for the information provided;

4. Welcoming the ratification by Ukraine of the European Charter of Local Self-Government (11 September 1997) which was accepted without any reservations and entered into force on 1 January 1998;⁵

5. Regretting that Ukraine has not yet ratified the European Convention on Regional or Minority Languages and the European Convention for the Participation of Foreigners in Public Local Life;

6. Regrets:

a. that in the context of a centralised public administration system, some Ukrainian political forces are still opposed to any reform involving the decentralisation of public powers on the basis of the subsidiarity principle (Article 4.3 of ECLSG);

b. that the laws and constitution regarding local and regional self-government are often unclear and badly implemented;

c. that over the last two years, the above-mentioned legislative deficit and disorder contributed in practice to create a serious democratic as well as rule of law deficit which represents a worrying step back;

7. Is of the opinion that, when ratifying the charter, the competent Ukrainian authorities probably underestimated the scope and political impact of this important Council of Europe convention, which is far from being fully implemented in the country;

8. Convinced that:

a. the second CLRAE monitoring report on the situation of local and regional democracy in the country must be regarded by Ukrainian authorities as a constructive way to express the country's potential and satisfy the Ukrainian population's need for democracy, rule of law and human rights;

b. the European Charter of Local-Self Government is a fundamental tool to regulate the share of administrative and executive powers within the country and that local and

regional democracy represent an essential condition for a well-balanced implementation of the subsidiarity principle;

9. Seriously concerned by the worsening of democracy and the rule of law at local and regional level in Ukraine, should like to stress that beyond promises, expressions of friendship and of good intentions, the real interest of the Congress lies in the full implementation of the European Charter of Local Self-Government (ECLSG) and of its own recommendations;

10. With this in mind, takes note of the political arguments presented by the Ukrainian authorities to explain the worsening situation of democracy at local and regional level and the difficulty of rapidly approving radical reforms aimed at reinforcing local and regional self-government, but remains convinced that this worsening now necessitates concrete replies from the higher political Ukrainian authorities expressing their genuine will to respect the Council of Europe principles in the field of democracy and rule of law at local and regional level;

11. In the light of the above:

a. considers the talks of the Congress' representatives with the President of the Verkhovna Rada (Parliament of Ukraine) and the Prime Minister, held on 3 and 4 September 2001, as an encouraging sign in this direction;

b. welcomes Presidential Order No. 749/2001, signed on 30 August 2001, on "state support for the development of local self-government in Ukraine" (see Appendix 3 of the explanatory memorandum to this recommendation) and considers this text as a political commitment of the President of Ukraine before the Council of Europe's Congress of Local and Regional Authorities of Europe;

c. welcomes the adoption by the Verkhovna Rada of Ukraine of the Budget Code, promulgated by the President on 12 July 2001, aimed at establishing – *inter alia* – more balanced, transparent and objective relations between the state and regional and local authorities in the sharing of public resources;

d. congratulates the Committee for State Building and Local Self-Government of the Verkhovna Rada of Ukraine on its request to the competent authorities of the Council of Europe for an official opinion on the emerging draft law on local self-government and hopes that on this basis it will be possible to establish fruitful co-operation as regards the ongoing legislative process;

e. welcomes the letter from the Executive Vice-President of the Association of Ukrainian Cities, addressed to the CLRAE President on 10 September 2001 (see Appendix 4 of the explanatory memorandum to this recommendation) confirming that, further to the rapporteurs' last two visits to Ukraine, some steps towards the reinforcement of local democracy in Ukraine were made;

12. With this in mind, invites the presidential, parliamentary and governmental Ukrainian authorities to

take into account the following considerations and recommendations:

A. With regard to the administrative territorial organisation of the country and the institutional framework of democracy at local and regional level:

a. a constitutionally recognised, democratic system of regional self-government, directly representing the interests of communities at an intermediate level between local and state authorities, should be created;

b. the principles contained in the draft European charter of regional self-government⁶ should represent an essential guide to achieving this important objective;

c. with this in mind, for a well-balanced functioning of all tiers of self-government in the country and a clear understanding and share of the respective responsibilities, the law and the constitution should clearly distinguish local from regional self-government and the latter from peripheral state executive powers;

d. when important decisions are adopted in this field, fundamental rights of local and regional authorities must always be secured by implementing Article 5 of the ECLSG which stipulates that "Changes in local authorities' boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by the statute";

B. With regard to local and regional authorities' responsibilities:

a. an exaggerated number of legal acts, in some cases even contradictory, deal with the functions of local and regional authorities;

b. it is urgent to clarify the confusion existing in the relevant legislation on the basis of the subsidiarity principle, as defined in Article 4.3 of the ECLSG;

c. this confusion could be corrected by the adoption of a municipal code, clearly defining the functions of the different tiers of public authorities concerned;

d. substantial, exclusive and full responsibilities shall be transferred to local and regional authorities by law. These responsibilities:

i. shall be clearly distinguished from the responsibilities assigned to other authorities;

ii. shall not be undermined or limited by another, central or regional, authority except as provided for by the law (Articles 3.1 and 4.4 of the ECLSG);

iii. shall replace a number of important delegated responsibilities which in Ukraine represent an external disproportionate burden for the locally elected representatives and their executive bodies and personnel;

e. the transfer of responsibilities to local and regional authorities should be done together with the necessary financial resources to carry them out (Article 9.2 of the ECLSG);

f. local authorities must also have the possibility to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority (Article 4.2 of the ECLSG) and to adapt the exercise of delegated responsibilities to local conditions (Article 4.5 of the ECLSG);

C. With regard to the financial resources of local and regional authorities, and bearing in mind the positive reform based on the recently adopted Budget Code, other efforts are still necessary in order to fully implement the main provisions of Article 9 of the ECLSG (paragraphs 1, 2 and 3). In this respect, it is useful to remember that:

a. local and regional authorities shall be entitled to adequate financial resources of their own, of which they may dispose freely within the framework of their powers;

b. local and regional authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law;

c. at least part of the financial resources of local and regional authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate;

d. clear legislative rules on the status of local and regional property (including natural resources) and on its direct management by the authorities concerned should be quickly adopted;

D. With regard to the problematic relationship between local and central authorities and, more particularly, the growing number of mayors removed from office, further to political pressure on locally elected representatives by peripheral state executive powers;⁷

a. it should be noted that, on the basis of Articles 7.1 and 8 of the ECLSG, the conditions of office of locally elected representatives shall provide for free exercise of their functions and that the control exerted by central authorities, which should refer to the legality of the acts of local authorities exclusively, has to be kept in proportion to the importance of the interest which it is intended to protect;

b. with this in mind, it should also be stressed that:

i. decisions to dismiss locally elected representatives must always have full justification under the relevant laws;

ii. the provisions of the Law on Local Self-Government on the dismissal of elected representatives are too vague and could represent a basis for abuse. These provisions should be carefully detailed so that judicial control by independent courts is generally ascertained;

iii. the right of dismissed locally elected representatives to a judicial remedy should be secured not only in law but also in practice;

c. central authorities should adapt existing legislation to ensure that all cases of removal of local and regional elected representatives and of pressure on these representatives by state administrations' representatives over the three last years are carefully considered by the competent Ukrainian authorities, that is to say, as a last remedy, by judicial authorities;

E. With regard to the role of mayors:

a. the legislation should be complemented by specific regulations better defining the status of mayors, the rules governing his/her relations with the council and the executive committee, the execution of his/her responsibilities, the legal and judicial guarantees necessary to fulfil them;

b. the weakness of the mayors' status should never be complemented or corrected by facilitating the conditions of the mayors' removal;

F. With regard to executive bodies of local and regional authorities, it is essential that all local and regional councils, including the cities of Kyiv and Sebastopol, further to necessary amendments to the constitution, have their own executive bodies (governments politically accountable to them) and administrations (personnel). This would represent a concrete implementation of Articles 3.2 and 6.1 of the ECLSG:

G. With regard to the status of the cities of Kyiv and Sebastopol, it should be stressed that the adoption of separate laws for these two important Ukrainian cities should not deprive them of an administration based on a fully-fledged system of local self-government respecting the principles contained in the ECLSG;

In particular, one can regret that, in spite of the express provision of the constitution, no law on the city of Sebastopol has, so far, been adopted;

H. With regard to the judicial protection of local self-government, it should be remembered that the ongoing political discussion on the reform of the judicial system must take into account the right of local authorities to a judicial remedy in order to secure the free exercise of their powers (Article 11 of the ECLSG);

I. The problems of access to the media by local and regional representatives should be quickly corrected. The relevant Council of Europe authorities should be informed of the measures taken in this field so that the European co-operation programmes concerning the media can take into account the local democracy dimension;

J. With regard to the possible reform of the electoral system at local level:

a. it should be stressed that the choice of the electoral system is a political one. With this in mind, any possible reform in this field should take into account all advantages and disadvantages of the solutions proposed and this in order to avoid democratic deficit;

b. the associations representing local and regional authorities should be duly consulted;

K. With regard to the consultation of local authorities' associations by central authorities it should be remembered that on the basis of:

a. Article 4.6 of the ECLSG, "Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way, in the planning and decision-making processes for all matters which concern them directly";

b. Article 3 of the CLRAE charter, adopted by the Committee of Ministers as an appendix to Statutory Resolution (2000) 1 on the CLRAE, "Representatives and Substitutes to the CLRAE shall be appointed by an official procedure specific to each member state. In particular, it shall provide for consultation in each member state of the relevant associations and/or institutional bodies (...)". In applying strictly this provision, the relevant Ukrainian authorities shall ensure that elected representatives of the Republic of Crimea are also eligible to be appointed as members of the Ukrainian delegation to the CLRAE.

L. With regard to the training of local authorities' representatives, it is essential that the text of the European Charter of Local Self-Government be accurately translated, explained and officially circulated to all local and regional authorities of the country. In particular the text of the charter should represent one of the main legal references of

the above-mentioned representatives when attending any specific training dedicated to them.

1. Debated and adopted by the Standing Committee of the Congress on 9 November 2001 (see Doc. CG (8) 22, draft recommendation presented by Mr L. Kieres and Mr L. Roppe, rapporteurs).

2. CLRAE Document CG (5) 6 part II dated 19 May 1998. Rapporteurs: Mr. A. Chénard (France, L) and Mr. K. Bodfish (United Kingdom, R).

3. CLRAE Document CG/BUR (7) 95 dated 21 February 2001. Rapporteurs: Mr L. Roppe (Belgium, L) and L. Kieres (Poland, R).

4. CLRAE Documents CG/INST (7) 21 and CG/INST (8) 2.

5. On the basis of the Ratification Act, the Constitution and the relevant legislation of Ukraine, the European Charter of Local Self-Government applies to all local districts' (*raions*) and regions' (*oblasts*) authorities of the country.

6. This draft convention was approved by the CLRAE in 1997 and it is currently being discussed at the Council of Europe's intergovernmental level.

7. Taking into account the information directly collected by the rapporteurs and that provided by the Association of Ukrainian Cities, in a document addressed to the Congress secretariat on 21 August 2001, problems were reported in the following cities: Myrhorod, Luhansk, Romny, Shostka, Konotop, Lebedyn, Krasnodon, Pervomaisk and Cherkassy, Zaporizzhia, Vasytkiv, Kremenchuk, Derazhnia, Chortkiv, Sukhodilsk, Hlukhiv, Tsiuriupynsk, Pryluky.